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OF 1987
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ARKANSAS CODE OF 1987 ANNOTATED



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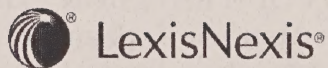
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Matthew Bender & Company, Inc.

555 Middle Creek Parkway, Colorado Springs, CO 80921

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PREFACE

The 2020-2021 Advance Code Service keeps the Arkansas Code of 1987 Annotated as current as possible by providing notes to cases and law reviews, and updated table and index entries, as well as other pertinent information, in the interim period between the publication of Supplements to the Code. Each Advance Code Service pamphlet is cumulative and may be recycled or discarded upon receipt of the next pamphlet.

Material in the Advance Code Service follows the structure of the Arkansas Code of 1987 Annotated and should be used in conjunction with the Code and its 2019 Supplement.

This pamphlet contains updates for the legislation enacted by the General Assembly through the 2020 First Extraordinary Session and 2020 Fiscal Session, and also includes the 2021 Regular Session acts effective as of February 11, 2021. Annotations to state court decisions are current through February 4, 2021.

Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions
Federal Supplement
Federal Reporter
United States Supreme Court Reports
Bankruptcy Reporter
Arkansas Law Notes
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PREFACE

The 2021 Arkansas Code Service Book, Arkansas Code, is published as a current as possible by providing notes to cases and law reviews, and updated table and index entries, as well as other pertinent information in the margin, to assist the publisher in supplementing to the Code. Each Arkansas Code Service Book is published in print and may be viewed or downloaded upon receipt of the book.

Published in the Arkansas Code Service Book, the structure of the Arkansas Code of 1987 Amendment and should be used in connection with the Code and its 2021 Amendment.

The pamphlet contains updates for the legislation enacted by the General Assembly through the 2021 Regular Session and 2021 Special Session, and also includes the 2021 Regular Session acts effective until February 1, 2021. Amendments to state court decisions are current through February 1, 2021.

Amendments are to the following sources:
Arkansas Supreme Court and Arkansas Court of Appeals Opinions

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TITLE 3

ALCOHOLIC BEVERAGES

CHAPTER 8

LOCAL OPTION

SUBCHAPTER 2 — PROCEEDINGS PURSUANT TO INITIATED ACT

3-8-205. Determination of sufficiency of petition — Calling of election.

CASE NOTES

Applicability.

Subdivision (d)(3) of this section did not apply where the record did not indicate that the election commissioners had delayed the election pending the court's de-

cision, and because the election had not been delayed, the election did not need to be reset. Stay Strong, Status Quo v. Bradford, 2020 Ark. 331, 609 S.W.3d 367 (2020).

SUBCHAPTER 8 — CIRCULATION OF PETITION FOR LOCAL OPTION ELECTION

3-8-801. Definitions.

CASE NOTES

Paid Canvasser.

Petition parts collected by a canvasser were not struck for failing to comply with the statutory requirements for paid canvassers as sufficient facts were not alleged that the canvasser received anything of

value for canvassing the petition; the alleged exchange for value, namely legal services, benefited the petition sponsor, not the canvasser. Stay Strong, Status Quo v. Bradford, 2020 Ark. 331, 609 S.W.3d 367 (2020).

3-8-805. Signing of petition — Penalty for falsification — Notice of suspected forgery.

CASE NOTES

Petition Form Valid.

Ballot issue petition form, which requested additional information from signers, was not invalid under this section or § 3-8-806 as it included the information

required by this section and substantially complied with the petition format included in § 3-8-806. Stay Strong, Status Quo v. Bradford, 2020 Ark. 331, 609 S.W.3d 367 (2020).

3-8-806. Form of initiative petition — Sufficiency of signatures.**CASE NOTES****Petition Form Valid.**

Ballot issue petition form, which requested additional information from signers, was not invalid under § 3-8-805 or this section as it included the information

required by § 3-8-805 and substantially complied with the petition format included in this section. Stay Strong, Status Quo v. Bradford, 2020 Ark. 331, 609 S.W.3d 367 (2020).

3-8-811. Count of signatures.**CASE NOTES****Paid Canvasser.**

Petition parts collected by a canvasser were not struck for failing to comply with the statutory requirements for paid canvassers as sufficient facts were not alleged that the canvasser received anything of

value for canvassing the petition; the alleged exchange for value, namely legal services, benefited the petition sponsor, not the canvasser. Stay Strong, Status Quo v. Bradford, 2020 Ark. 331, 609 S.W.3d 367 (2020).

TITLE 4**BUSINESS AND COMMERCIAL LAW****SUBTITLE 3. CORPORATIONS AND ASSOCIATIONS****CHAPTER 27****BUSINESS CORPORATION ACT OF 1987****SUBCHAPTER 8 — DIRECTORS — OFFICERS — MEETINGS —
STANDARDS OF CONDUCT — INDEMNIFICATION****PART C: STANDARDS OF CONDUCT****4-27-830. General standards for directors.****CASE NOTES****Breach of Fiduciary Duty.**

Plaintiff, who was a shareholder, officer, director, and creditor of the parent company of a bank as well as a director and customer of the bank, failed to state a cause of action for breach of fiduciary duty because defendant, who was an officer and director of the bank and the parent company, owed no duty to inform plaintiff that

plaintiff would have to pay his loans at the bank prematurely before a bank examination. The only damage was to plaintiff's personal financial situation, and defendant had no fiduciary duty to plaintiff as a customer; the bank was not so intimately involved in plaintiff's business as to create a fiduciary duty. Quinn v. O'Brien, 2020 Ark. App. 83, 596 S.W.3d 20 (2020).

PART D: OFFICERS**4-27-842. Standards of conduct for officers.****CASE NOTES****Motion to Dismiss.**

Plaintiff, who was a shareholder, officer, director, and creditor of the parent company of a bank as well as a director and customer of the bank, failed to state a cause of action for breach of fiduciary duty because defendant, who was an officer and director of the bank and the parent company, owed no duty to inform plaintiff that

plaintiff would have to pay his loans at the bank prematurely before a bank examination. The only damage was to plaintiff's personal financial situation, and defendant had no fiduciary duty to plaintiff as a customer; the bank was not so intimately involved in plaintiff's business as to create a fiduciary duty. *Quinn v. O'Brien*, 2020 Ark. App. 83, 596 S.W.3d 20 (2020).

CHAPTER 32**SMALL BUSINESS ENTITY TAX PASS THROUGH ACT****SUBCHAPTER 1 — GENERAL PROVISIONS****4-32-101. Title.****RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Carol Goforth, Making the Case for the Uniform Limited Liability Company Act (2013) in

Arkansas, 40 U. Ark. Little Rock L. Rev. 187 (2017).

4-32-102. Definitions.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Carol Goforth, Making the Case for the Uniform Limited Liability Company Act (2013) in

Arkansas, 40 U. Ark. Little Rock L. Rev. 187 (2017).

SUBCHAPTER 2 — FORMATION**4-32-206. Effect of delivery or filing of articles of organization.****RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Carol Goforth, Making the Case for the Uniform Limited Liability Company Act (2013) in

Arkansas, 40 U. Ark. Little Rock L. Rev. 187 (2017).

**SUBCHAPTER 3 — RELATIONS OF MEMBERS AND MANAGERS TO PERSONS
DEALING WITH THE LIMITED LIABILITY COMPANY**

4-32-301. Agency power of members and managers.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Carol Goforth, Making the Case for the Uniform Limited Liability Company Act (2013) in	Arkansas, 40 U. Ark. Little Rock L. Rev. 187 (2017).
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SUBCHAPTER 4 — RIGHTS AND DUTIES OF MEMBERS AND MANAGERS

4-32-402. Duties of managers and members.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Carol Goforth, Making the Case for the Uniform Limited Liability Company Act (2013) in	Arkansas, 40 U. Ark. Little Rock L. Rev. 187 (2017).
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4-32-405. Records and information.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Carol Goforth, Making the Case for the Uniform Limited Liability Company Act (2013) in	Arkansas, 40 U. Ark. Little Rock L. Rev. 187 (2017).
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SUBCHAPTER 8 — ADMISSION AND WITHDRAWAL OF MEMBERS

4-32-802. Events of dissociation.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Carol Goforth, Making the Case for the Uniform Limited Liability Company Act (2013) in	Arkansas, 40 U. Ark. Little Rock L. Rev. 187 (2017).
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CASE NOTES

Death of Member.

Circuit court erred in finding that the operating agreement did not transfer the decedent's interest in the LLC to the grandson on the decedent's death where the operating agreement clearly and unambiguously established that the decedent and the grandson, who was the other

LLC member, intended for their ownership, interest, and income from the LLC to pass automatically and immediately to the surviving member in the event of either of their deaths. *Estate of Cook v. Willhite*, 2020 Ark. App. 292, 601 S.W.3d 453 (2020).

SUBCHAPTER 9 — DISSOLUTION**4-32-902. Judicial dissolution.****RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Carol Arkansas, 40 **U. Ark. Little Rock L. Rev.**
Goforth, Making the Case for the Uniform 187 (2017).
Limited Liability Company Act (2013) in

SUBCHAPTER 13 — MISCELLANEOUS**4-32-1308. Filing requirements.****RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Carol Arkansas, 40 **U. Ark. Little Rock L. Rev.**
Goforth, Making the Case for the Uniform 187 (2017).
Limited Liability Company Act (2013) in

SUBTITLE 4. PARTNERSHIPS**CHAPTER 46****UNIFORM PARTNERSHIP ACT (1996)****SUBCHAPTER 2 — NATURE OF PARTNERSHIP****4-46-204. When property is partnership property.****CASE NOTES****Partnership Property.**

Where sister filed suit to dissolve a family farming partnership, the circuit court clearly erred in awarding a 273-acre farm parcel to the brother as his separate property where the testimony and records showed that it had been operated as if it was partnership property for over 20 years, it was used as collateral for partnership loans, and each of the partners had contributed land, capital, equipment, labor, and management for the farm; the evidence in support of the presumption in subsection (c) of this section was overwhelming and the brother did not suffi-

ciently rebut the presumption. *Hitt v. Lyle*, 2020 Ark. App. 124, 596 S.W.3d 540 (2020).

Where sister filed suit to dissolve a family farming partnership, the circuit court did not clearly err by finding that a 15-acre plot was one partner's individual property and not partnership property where the evidence showed that the land was a gift to the partner alone, evidenced by the plain language of the deed, which was executed by all partners. *Hitt v. Lyle*, 2020 Ark. App. 124, 596 S.W.3d 540 (2020).

SUBCHAPTER 7 — PARTNER’S DISSOCIATION WHEN BUSINESS NOT WOUND UP

4-46-703. Dissociated partner’s liability to other persons.

CASE NOTES

Cited: Hitt v. Lyle, 2020 Ark. App. 124, 596 S.W.3d 540 (2020).

SUBCHAPTER 8 — WINDING UP PARTNERSHIP BUSINESS

4-46-803. Right to wind up partnership business.

CASE NOTES

Preservation Appropriate.

Where sister filed suit to dissolve a family farming partnership, the assigning of 25% of certain debts to the sister was not clear error under the specific circumstances of the case, even though the debts were incurred after the sister gave notice

of her dissolution; the circuit court found that the debts were incurred to maintain the farming operation, and it was likely that the farm would have gone into foreclosure without the loans. Hitt v. Lyle, 2020 Ark. App. 124, 596 S.W.3d 540 (2020).

4-46-804. Partner’s power to bind partnership after dissolution.

CASE NOTES

Preservation.

Where sister filed suit to dissolve a family farming partnership, the assigning of 25% of certain debts to the sister was not clear error under the specific circumstances of the case, even though the debts were incurred after the sister gave notice

of her dissolution; the circuit court found that the debts were incurred to maintain the farming operation, and it was likely that the farm would have gone into foreclosure without the loans. Hitt v. Lyle, 2020 Ark. App. 124, 596 S.W.3d 540 (2020).

SUBTITLE 5. CONTRACTS, NOTES, AND OTHER COMMERCIAL INSTRUMENTS

CHAPTER 58 ASSIGNMENTS

4-58-102. Assignment of certain instruments authorized.

CASE NOTES

Automobile Insurance Benefits.

Automobile insurer’s payment of med-pay benefits to a medical center over the insured’s objections was upheld where: the policy stated that benefits can be paid

“to or for” the insured; sections 23-89-202 and 23-89-204 do not mandate payment only to the insured; section 4-58-102 allows an insured to assign the right to receive insurance proceeds, as the insured

had done in this case, and the insurer was obligated by law to honor the assignment and lien; section 23-85-114(b) does not apply to automobile insurance; and there was no evidence that the insured had

advised either the insurer or the medical center of a revocation of the specific assignment of benefits to the medical center. *United Servs. Auto. Ass'n v. Norton*, 2020 Ark. App. 100, 596 S.W.3d 522 (2020).

4-58-106. Powers of assignor after assignment.

CASE NOTES

Cited: *United Servs. Auto. Ass'n v. Norton*, 2020 Ark. App. 100, 596 S.W.3d 522 (2020).

CHAPTER 59

FRAUD

SUBCHAPTER 1 — STATUTE OF FRAUDS

4-59-101. Contracts, agreements, or promises required to be in writing — Definitions.

CASE NOTES

Contracts Concerning Land.

Because no written record could be located of any easement related to the property, appellant was unable to establish what specific property was described in the alleged easement, the length of the

term, and whether the alleged easement was personal to the grantees or instead ran with the land. *Cross Cty. Sch. Dist. v. Turbiville*, 2020 Ark. App. 478, 612 S.W.3d 723 (2020).

SUBCHAPTER 2 — UNIFORM VOIDABLE TRANSACTIONS ACT

4-59-201. Definitions.

CASE NOTES

Creditor.

In creditor's action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, the creditor of the deceased had standing to pursue its claim under

the Fraudulent Transfers Act, § 4-59-201 et seq., against the transferee beneficiary. *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019) (decided under pre-2017 version of § 4-59-201 et seq.).

4-59-204. Transfer or obligation voidable as to present or future creditor.

CASE NOTES

ANALYSIS

Fraudulent Intent.

—Indebtedness or Insolvency.

Fraudulent Intent.

—Indebtedness or Insolvency.

In creditor's action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, summary judgment was improperly granted to the beneficiary as there was a factual issue as to whether the decedent "reasonably should have believed that she would incur debts beyond her ability to pay as they became due"; this section does not require the creditor to demonstrate the debtor's actual intent.

Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc., 2019 Ark. 371, 584 S.W.3d 685 (2019) (decided under pre-2017 version of § 4-59-201 et seq.).

In creditor's action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, summary judgment for the transferee beneficiary was reversed where the creditor presented proof that the IRS had a claim for tax deficiencies dating back several years, that the decedent had multiple creditors, and that her estate was likely insolvent. *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019) (decided under pre-2017 version of § 4-59-201 et seq.).

4-59-205. Transfer or obligation voidable as to present creditor.

CASE NOTES

Insolvency.

In creditor's action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, summary judgment was improperly granted to the beneficiary as this section does not require the creditor to demonstrate the debtor's actual intent; the creditor presented proof that the IRS

had a claim for tax deficiencies dating back several years, that the decedent had multiple creditors, and that her estate was likely insolvent. *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019) (decided under pre-2017 version of § 4-59-201 et seq.).

4-59-207. Remedies of creditor.

CASE NOTES

Transfer on Death.

In creditor's action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, the circuit court erroneously ruled that the probate court had exclusive jurisdiction and that the circuit court lacked jurisdiction; under Ark. Const. Amend. 80, § 6, and the fact that, under the Uniform Transfer on Death Security Registration Act, § 28-14-101 et seq., the money transferred from the TOD account did not become part of the estate, the

circuit court clearly had jurisdiction. *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019).

In creditor's action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, the transferee's argument failed that the personal representative of the estate and not the creditor had standing for such an action; while there are procedures within the probate code that would allow for the challenge of an alleged

fraudulent conveyance, § 28-14-109 concerning TODs plainly allows creditors to pursue their claims against transferees under other Arkansas laws, and thus a creditor also may pursue its claim under the Fraudulent Transfers Act, § 4-59-201 et seq. *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019) (decided under pre-2017 version of § 4-59-201 et seq.).

In creditor's action to set aside an al-

leged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, the creditor of the deceased had standing to pursue its claim under the Fraudulent Transfers Act, § 4-59-201 et seq., against the transferee beneficiary. *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019) (decided under pre-2017 version of § 4-59-201 et seq.).

4-59-209. Extinguishment of claim for relief.

CASE NOTES

Applicability.

In a will contest, the three-year statute of limitations for claims under the Arkansas Fraudulent Transfers Act did not apply because appellee who sought a constructive trust was not a creditor seeking a remedy under that Act; rather, the facts alleged in the petition sounded in tort

based on appellant's alleged breach of fiduciary duty and alleged use of undue influence over the decedent, and thus the three-year statute of limitations for torts in § 16-56-105 more aptly applied. *Smith v. Smith (In re Estate of Smith)*, 2020 Ark. App. 113, 597 S.W.3d 65 (2020) (decided under prior version of statute).

SUBTITLE 6. BUSINESS PRACTICES

CHAPTER 75

UNFAIR PRACTICES

SUBCHAPTER 1 — GENERAL PROVISIONS

4-75-101. Covenant not to compete agreements.

CASE NOTES

Enforceability.

Noncompetition clause was unenforceable as there was no restriction that prevented other employees from resigning and using some of the employer company's confidential information to start a digital printing business or work for another corrugated-box converter, and thus the company's information was not a protectable

business interest that warranted enforcing the clause against the former employee office manager. The clause as applied to the facts presented was too broad to be enforced and any information obtained by the employee did not create an unfair competitive advantage. *Lamb & Assocs. Packaging v. Best*, 2020 Ark. App. 62, 595 S.W.3d 378 (2020).

SUBCHAPTER 6 — THEFT OF TRADE SECRETS**4-75-601. Definitions.****CASE NOTES****Trade Secret.**

Supplier did not undertake reasonable efforts to maintain the secrecy of three of the four alleged trade secrets from a buyer because the supplier never told the buyer that the technologies at issue were trade secrets and its broad declaration that everything except 13 specific templates was its exclusive property was insufficient to identify the techniques as trade secrets under Arkansas law. *Walmart Inc. v. Cuker Interactive, LLC*, 949 F.3d 1101 (8th Cir. 2020).

Where the buyer knew that the supplier's source files contained confidential materials and trade secrets, and the supplier took steps to protect them and did not acquiesce to the buyer's demands for them until compelled to do so, this was sufficient to identify the techniques as trade secrets under Arkansas law. *Walmart Inc. v. Cuker Interactive, LLC*, 949 F.3d 1101 (8th Cir. 2020).

4-75-604. Injunctive relief.**CASE NOTES****Scope of Relief.**

Where a buyer knew that the supplier's source files contained confidential materials and trade secrets, and the supplier took steps to protect them and where the record showed that the buyer misappropriated them, injunctive relief ordering the buyer to delete the supplier's source files was warranted under this section of the Arkansas Trade Secrets Act because

the supplier testified that the files were a years-long compilation of technical know-how it continually drew from, and if allowed to keep the files in its possession, the buyer could use them, or share them, in connection with another project, and there was nothing to suggest that the files' usefulness to the buyer had expired or would expire. *Walmart Inc. v. Cuker Interactive, LLC*, 949 F.3d 1101 (8th Cir. 2020).

SUBTITLE 7. CONSUMER PROTECTION**CHAPTER 88****DECEPTIVE TRADE PRACTICES****SUBCHAPTER 1 — GENERAL PROVISIONS****4-88-113. Civil enforcement and remedies — Suspension or forfeiture of charter, franchise, etc.****CASE NOTES****Actual Damages.**

It was not necessary to determine whether the 2017 amendment to this section, requiring "actual financial loss", applied to plaintiff's complaint because he

failed to meet the "actual damage or injury" requirement of the pre-2017 version of this section. *Parnell v. FanDuel, Inc.*, 2019 Ark. 412, 591 S.W.3d 315 (2019).

Circuit court properly dismissed a sub-

scriber's complaint and class-action allegations against an internet-based fantasy sports game company for violation of the Arkansas Deceptive Trade Practices Act and unjust enrichment; while the subscriber alleged that the company failed to match his \$200 deposit as advertised, he failed to allege any "actual damage or

injury" where he made no allegation that he was in any way prevented from spending or withdrawing his deposit from his account and could not demonstrate that the company was unjustly enriched. *Parnell v. FanDuel, Inc.*, 2019 Ark. 412, 591 S.W.3d 315 (2019).

TITLE 5

CRIMINAL OFFENSES

SUBTITLE 6. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, OR WELFARE

CHAPTER.

73. WEAPONS.

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

5-1-102. Definitions.

CASE NOTES

ANALYSIS

Person.

Physical Injury.

Serious Physical Injury.

Person.

In denying defendant's petition for post-conviction relief after he was sentenced to death for capital murder, the circuit court failed to properly construe this section and § 5-4-604 strictly and in the defendant's favor when it extended the "unborn child" part of the definition of "person" found in subdivision (13)(B) of this section to a sentencing statute, § 5-4-604. Construing the statutes strictly, as required, the circuit court erred in presenting to the jury the death of the victim's unborn child as an aggravating factor, and defendant's trial attorneys were ineffective when they

abandoned the argument. *Smith v. State*, 2020 Ark. 410 (2020).

General Assembly expressly and specifically confined the application of the "unborn child" part of the definition of "person" to the homicide statutes and made no provision to extend its definition to sentencing. *Smith v. State*, 2020 Ark. 410 (2020).

Physical Injury.

Circuit court did not err in denying defendant's motion for directed verdict on the charge of battery in the second degree because the victim, a jailer, testified he suffered an abrasion on his forehead during the altercation with defendant; scratches and abrasions are sufficient to meet the definition of physical injury, and the jury was entitled to give credit to the victim's testimony. *Chambers v. State*, 2020 Ark. App. 54, 595 S.W.3d 371 (2020).

Serious Physical Injury.

Trial court did not abuse its discretion in ruling that defendant, charged with first-degree battery, was not entitled to a second-degree battery instruction under § 5-13-202(a)(1) because defendant provided no rational basis for a second-degree battery instruction, as (1) the victim's bullet wounds creating a substantial risk of death were a serious injury, (2) defen-

dant's claim that the victim's injury was not serious was no basis for the instruction, as first- and second-degree battery both required a serious physical injury, and (3) evidence that defendant shot the victim in the neck and in the back as the victim fled showed intent to inflict serious physical injury. *Dixon v. State*, 2019 Ark. 245, 581 S.W.3d 505 (2019).

5-1-109. Statute of limitations.**CASE NOTES****ANALYSIS**

Commencement of Prosecution.
Continuing Crime.
No Expiration.

Commencement of Prosecution.

Because the 2013 version of subdivision (a)(1)(G) of this section, which permits a prosecution for second-degree sexual assault to be commenced at any time, was in effect when the second-degree sexual assault charge was brought against defendant in 2018, the charge was not time-barred. *Oliver v. State*, 2020 Ark. App. 498, 612 S.W.3d 738 (2020).

Because the 2013 version of subdivision (a)(1)(D) of this section, which permits a prosecution for rape to be commenced at any time, was in effect when the rape charge was brought against defendant in 2018, the charge was not time-barred. *Oliver v. State*, 2020 Ark. App. 498, 612 S.W.3d 738 (2020).

In sentencing defendant after he pleaded guilty to felony theft of property for embezzling money from his employer, the trial court did not err in applying subsection (c) of this section and in finding that none of the restitution was time-barred where the theft was not discovered until several months after defendant's termination from employment due to his

successful concealment of the fraudulent activity. Thus, the one-year period in subdivision (c)(1) of this section did not begin until the offense was actually discovered in August 2018. Because the prosecution was commenced on January 11, 2019, the statute of limitations did not run as to any of the restitution. *Bushnell v. State*, 2020 Ark. App. 566 (2020).

Continuing Crime.

Defendant was charged with one crime, theft by receiving under § 5-36-106, which is a continuing offense, and it was not erroneous to aggregate the amount stolen from her employer over a period of time under § 5-36-102(d)(2) and classify the crime as a Class B felony, even though each individual act of acquiring possession did not add up to over \$25,000. The last time defendant stole money from her employer was in February 2014, which was well within the time limit for statute of limitations calculations for a Class B felony under this section. *Clements v. State*, 2020 Ark. App. 175, 594 S.W.3d 922 (2020).

No Expiration.

Three-year statute of limitations had not run on the failure-to-appear charge. *Hall v. State*, 2020 Ark. App. 135, 594 S.W.3d 175 (2020).

5-1-110. Conduct constituting more than one offense — Prosecution.

CASE NOTES

ANALYSIS

Lesser-Included Offenses.
Separate Acts.

Lesser-Included Offenses.

Trial court did not err in failing to instruct the jury on negligent homicide because it was not a lesser-included offense of unlawful discharge of a firearm from a vehicle, and defendant's proffered instruction did not meet any of the three alternative tests set out in this section where the culpable mental state for negligent homicide was directed at the act of causing the death of another person and the culpable mental state for first-degree

unlawful discharge of a firearm from a vehicle was directed at the act of discharging the firearm. *Webb v. State*, 2019 Ark. App. 436, 587 S.W.3d 252 (2019).

Separate Acts.

Trial court did not abuse its discretion in denying postconviction relief because trial counsel was not ineffective for failing to move for dismissal of the charge of second-degree sexual assault on double jeopardy grounds, as the State presented evidence of separate impulses comprising separate acts conforming with the definitions of rape and second-degree sexual assault. *Sorum v. State*, 2019 Ark. App. 354, 582 S.W.3d 18 (2019).

5-1-111. Burden of proof — Defenses and affirmative defenses — Presumption.

CASE NOTES

Jurisdiction.

Under subsection (b) of this section, the State is not required to prove jurisdiction unless evidence is admitted that affirmatively shows that the court lacks jurisdiction; therefore, defendant's argument that the State failed to prove he had not registered in Michigan as a sex offender was rejected as the Arkansas circuit court clearly had jurisdiction because defendant left his registered address in Arkansas, taking all his personal belongings, and he

never returned to his registered address and never notified local law enforcement in Arkansas of his new address as required by the Sex Offender Registration Act, § 12-12-901 et seq. *Guyton v. State*, 2020 Ark. App. 273, 601 S.W.3d 440 (2020).

Cited: *Peoples v. State*, 2019 Ark. App. 559, 590 S.W.3d 783 (2019); *Clements v. State*, 2020 Ark. App. 175, 594 S.W.3d 922 (2020); *Bushnell v. State*, 2020 Ark. App. 566 (2020).

5-1-112. Affirmative defense — Former prosecution for same offense.

CASE NOTES

Overruling Necessity.

Defendant's retrial did not violate double jeopardy because the circuit court did not abuse its discretion in sua sponte declaring a mistrial due to an overruling necessity, based on (1) a number of circumstances outside the control of the

court and the State, including the unexpected unavailability of an interpreter for a second day of trial and a full docket the rest of the week, and (2) the court's efforts to try to complete the trial in one day. *Vasquez-Ramirez v. State*, 2019 Ark. App. 599, 591 S.W.3d 379 (2019).

CHAPTER 2

PRINCIPLES OF CRIMINAL LIABILITY

SUBCHAPTER 2 — CULPABILITY

5-2-202. Culpable mental states — Definitions.

CASE NOTES

ANALYSIS

Knowingly.
Purposely.
Recklessly.

Knowingly.

Evidence was sufficient to support defendant's conviction of murder in the first degree under § 5-10-102(a)(3) where the victim was the youngest of defendant's children, a forensic examiner and experts testified that he had died of starvation, evidence showed that defendant had withheld formula from him, and defendant had previously cared for the victim's five other premature siblings, all of whom survived infancy; there was substantial evidence presented to support a conclusion that defendant, who had an IQ of 75, was aware of the risk caused by the infant's obvious malnourishment and that she was aware that it was practically certain her conduct would cause the infant's death. *Bowman v. State*, 2019 Ark. App. 469, 588 S.W.3d 129 (2019).

Court of Appeals affirmed defendant's conviction for filing a false police report because the circuit court found that defendant knowingly filed a false report on the basis of its credibility determination, and the Court of Appeals was not at liberty to disturb the circuit court's credibility determinations on appeal; the circuit court listened to defendant's recording and a state senator's recording, watched and listened to the recording from the police department, and observed the testimony of the witnesses. *Ferry v. State*, 2021 Ark. App. 34 (2021).

Purposely.

In defendant's trial for first-degree terroristic threatening arising from a workplace incident, it was reasonable for the jury to conclude that defendant threatened the victim in order to terrorize him, in violation of § 5-13-301(a)(1)(A), where multiple witnesses testified that defendant had pointed a pistol at the victim, the victim testified that as defendant aimed, he told him that he was "fixing to shoot", and the jurors were entitled to rely on their common knowledge and life experiences to infer that, given the circumstances, defendant acted with the conscious objective to cause the victim terror. *Hughes v. State*, 2020 Ark. App. 114, 596 S.W.3d 58 (2020).

Recklessly.

Although the circuit court in a bench trial incorrectly held that the applicable culpable mental state was strict liability in a DWI case under § 5-65-103 that did not involve alcohol, defendant's conviction was affirmed where the circuit court made an alternative finding under the correct standard that the State had submitted proof sufficient to satisfy reckless conduct under § 5-2-203 and this section; the testimony of the officer, the pharmacist expert, and the defendant provided sufficient evidence to support a finding that defendant acted recklessly in taking prescribed barbiturates (for her migraine) and then operating a motor vehicle. *Cordero v. State*, 2019 Ark. App. 484, 588 S.W.3d 369 (2019).

5-2-203. Culpable mental states — Interpretation of statutes.

CASE NOTES

ANALYSIS

Recklessly.

Requirement and Establishment.

Recklessly.

Although the circuit court in a bench trial incorrectly held that the applicable culpable mental state was strict liability in a DWI case under § 5-65-103 that did not involve alcohol, defendant's conviction was affirmed where the circuit court made an alternative finding under the correct standard that the State had submitted proof sufficient to satisfy reckless conduct under subsection (b) of this section and § 5-2-202; the testimony of the officer, the pharmacist expert, and the defendant provided sufficient evidence to support a finding that defendant acted recklessly in taking prescribed barbiturates (for her

migraine) and then operating a motor vehicle. *Cordero v. State*, 2019 Ark. App. 484, 588 S.W.3d 369 (2019).

Requirement and Establishment.

Reversal of defendant's DWI conviction and remand for the circuit court to consider the evidence under the correct standard was appropriate because the circuit court incorrectly held that the applicable culpable mental state for non-alcohol-related offenses was strict liability and the court also did not make an alternative finding under the correct standard. Therefore, the appellate court could not conclude that the circuit court would have concluded that defendant acted at least recklessly under the evidence. *Rowton v. State*, 2020 Ark. App. 174, 598 S.W.3d 522 (2020).

5-2-204. Elements of culpability — Exceptions to culpable mental state requirement.

CASE NOTES

Mental State.

Candidate for circuit court judge was not disqualified from running due to his conviction for a violation of § 27-14-306, the fictitious motor vehicle tags statute, as misdemeanor "infamous crimes" under Ark. Const. Art. 5, § 9 and § 7-1-101 are misdemeanor offenses in which "the finder of fact was required to find, or the defendant to admit, an act of deceit, fraud, or false statement", and the appellate court could not say that a violation of § 27-14-306 required a finding or admission of deceit, fraud, or false statement. *Weeks v. Thurston*, 2020 Ark. 64, 594 S.W.3d 23 (2020).

While deceit, fraud, or a false statement certainly can be present in a violation of § 27-14-306, a finder of fact is not required under the statute to find deceit, fraud, or a false statement. Furthermore, only one of the three ways a person can violate § 27-14-306 requires a culpable mental state—knowingly permitting; under this section, a culpable mental state is not required if the offense is a violation and a culpable mental state is not expressly included in the definition of the offense. *Weeks v. Thurston*, 2020 Ark. 64, 594 S.W.3d 23 (2020).

5-2-207. Intoxication.

CASE NOTES

Self-Induced Intoxication.

Defendant's voluntary intoxication did not negate criminal intent when defen-

dant was tried for first-degree murder. *Hayes v. State*, 2020 Ark. 297 (2020).

SUBCHAPTER 3 — MENTAL DISEASE OR DEFECT**5-2-301. Definitions.****RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, Not Fit to Be Tried: Due Process and Mentally-Incompetent Criminal Defendants, 39 U. Ark. Little Rock L. Rev. 155 (2017).

5-2-302. Lack of fitness to proceed generally.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, Not Fit to Be Tried: Due Process and Mentally-Incompetent Criminal Defendants, 39 U. Ark. Little Rock L. Rev. 155 (2017).

5-2-306. Access to defendant by examiners of his or her choice.**CASE NOTES****Timely Request.**

Defendant's motion for continuance filed the day before trial to obtain an independent examination to support an affirmative defense of lack of criminal responsibility was properly denied as he had ample time to pursue an independent evaluation before trial, but instead planned to wait and see what the state hospital's report would conclude before seeking to obtain his own experts for an

evaluation; although the state hospital's report was not provided until shortly before trial, a defendant who employs such a "wait and see" strategy is not acting diligently in attempting to secure the necessary information on which to build a defense of mental disease or defect. In addition, defendant failed to show any prejudice from the denial of the continuance. *Hendrix v. State*, 2019 Ark. 351, 588 S.W.3d 17 (2019).

5-2-310. Lack of fitness to proceed — Procedures subsequent to finding.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, Not Fit to Be Tried: Due Process and Mentally-Incompetent Criminal Defendants, 39 U. Ark. Little Rock L. Rev. 155 (2017).

5-2-311. Lack of fitness to proceed — Motions without defendant's personal participation.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, Not Fit to Be Tried: Due Process and Mentally-Incompetent Criminal Defendants, 39 U. Ark. Little Rock L. Rev. 155 (2017).

5-2-312. Lack of criminal responsibility — Affirmative defense.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, Not Fit to Be Tried: Due Process and Mentally-Incompetent Criminal Defendants, 39 U. Ark. Little Rock L. Rev. 155 (2017).

CASE NOTES**Mental Disease or Defect.**

Trial court, acting as the factfinder, chose to credit the testimony of a sheriff's deputy that defendant was high on methamphetamine at the time of a crime over the opinion of a doctor, who performed psychological evaluations of defendant, that defendant was suffering from a men-

tal disease, schizoaffective disorder. The court was entitled to believe the deputy's testimony over the doctor's testimony and to decide that defendant did not prove the defense of mental disease by a preponderance of the evidence. *Sharp v. State*, 2019 Ark. App. 506, 588 S.W.3d 770 (2019).

5-2-313. Acquittal based on lack of criminal responsibility report.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, Not Fit to Be Tried: Due Process and Mentally-Incompetent Criminal Defendants, 39 U. Ark. Little Rock L. Rev. 155 (2017).

5-2-314. Acquittal — Examination of defendant — Hearing.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, Not Fit to Be Tried: Due Process and Mentally-Incompetent Criminal Defendants, 39 U. Ark. Little Rock L. Rev. 155 (2017).

5-2-315. Discharge or conditional release.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, Not Fit to Be Tried: Due Process and Mentally-Incompetent Criminal Defendants, 39 U. Ark. Little Rock L. Rev. 155 (2017).

5-2-327. Examination of defendant — Fitness to proceed.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, Not Fit to Be Tried: Due Process and Mentally-Incompetent Criminal Defendants, 39 U. Ark. Little Rock L. Rev. 155 (2017).

5-2-328. Examination of defendant — Affirmative defense of lack of criminal responsibility.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. J. Thomas Sullivan, Not Fit to Be Tried: Due Process and Mentally-Incompetent Criminal De-

fendants, 39 U. Ark. Little Rock L. Rev. 155 (2017).

CASE NOTES**Continuance.**

Defendant's motion for continuance filed the day before trial to obtain an independent examination to support an affirmative defense of lack of criminal responsibility was properly denied as he had ample time to pursue an independent evaluation before trial, but instead planned to wait and see what the state hospital's report would conclude before seeking to obtain his own experts for an

evaluation; although the state hospital's report was not provided until shortly before trial, a defendant who employs such a "wait and see" strategy is not acting diligently in attempting to secure the necessary information on which to build a defense of mental disease or defect. In addition, defendant failed to show any prejudice from the denial of the continuance. *Hendrix v. State*, 2019 Ark. 351, 588 S.W.3d 17 (2019).

SUBCHAPTER 4 — PARTIES TO OFFENSES**5-2-402. Liability for conduct of another generally.****CASE NOTES****Evidence.**

Evidence was sufficient to convict defendant of robbery as a party because her accomplice liability began with her concession on appeal that she voluntarily drove the accomplices to the theater with the knowledge that she would be committing at least one crime — to get marijuana; the accomplices planned and discussed the robbery from the back seat of defendant's vehicle; the conversation in-

cluded her brother, who was in the front seat beside her; and, although she denied hearing the plan or taking part in it, she told police that one of the accomplices stated that they were just going to take the marijuana. *West v. State*, 2020 Ark. App. 522 (2020).

Cited: *Shelter Mut. Ins. Co. v. Lovelace*, 2020 Ark. 93, 594 S.W.3d 84 (2020).

5-2-403. Accomplices.**CASE NOTES****Evidence Sufficient.**

Evidence was sufficient to convict defendant of robbery as a party because her accomplice liability began with her concession on appeal that she voluntarily drove the accomplices to the theater with the knowledge that she would be committing at least one crime — to get marijuana; the accomplices planned and dis-

cussed the robbery from the back seat of defendant's vehicle; the conversation included her brother, who was in the front seat beside her; and, although she denied hearing the plan or taking part in it, she told police that one of the accomplices stated that they were just going to take the marijuana. *West v. State*, 2020 Ark. App. 522 (2020).

SUBCHAPTER 6 — JUSTIFICATION

5-2-602. Defense.

CASE NOTES

General Denial and Justification.

In a bench trial resulting in defendant's convictions for aggravated assault on a family member and aggravated assault, the circuit court erred as a matter of law in refusing to consider the defense of justification by ruling that defendant could not present the inconsistent defenses of a general denial and justification; where there is evidence that would support a

finding of self-defense, case law has held that a jury instruction is appropriate notwithstanding defendant's testimony that he did not commit the crime. Thus, the circuit court committed an error of law in ruling that defendant was required to choose between the defenses of general denial and justification. *Gray v. State*, 2019 Ark. App. 543, 590 S.W.3d 177 (2019).

5-2-607. Use of deadly physical force in defense of a person.

CASE NOTES

ANALYSIS

Evidence.

Preservation for Review.

Self-Defense.

Evidence.

Concerning the second-degree murder conviction, there was substantial evidence to refute defendant's claim that she was justified in using deadly physical force because the eyewitness testified that the victim never struck or even touched defendant before she attacked him from behind with a knife as the victim was walking away from her holding his infant daughter; although defendant claimed to have been punched in the face and dragged on the ground by the victim, she had no injuries to substantiate those claims; and the medical examiner testified that the victim died as a result of being forcefully stabbed over the shoulder with a knife from behind and that, in addition to that fatal wound, the victim had been stabbed or cut multiple additional times with the knife. *Gillard v. State*, 2019 Ark. App. 438, 586 S.W.3d 703 (2019).

Substantial evidence supported the jury's verdict that the State negated defendant's justification defense because (1) defendant approached the victim and pulled a gun out of his waistband, and, (2) considering eyewitness testimony and a surveillance video, a jury could find defen-

dant's belief that he was justified in using deadly force was not reasonable. *Brown v. State*, 2020 Ark. App. 198, 595 S.W.3d 456 (2020).

Preservation for Review.

In an appeal of convictions for second-degree battery and aggravated residential burglary, the appellate court could not address defendant's argument that the evidence was insufficient to negate self-defense because it was not preserved for appeal. Defendant's directed-verdict motion to the circuit court did not mention self-defense or the elements of self-defense the State failed to negate. *Thompson v. State*, 2019 Ark. App. 391 (2019).

Self-Defense.

In a first-degree murder trial, there was substantial evidence supporting the jury's verdict that the State disproved defendant's justification defense; there was no other weapon found in the car with the victim, who was shot in the head from behind, defendant immediately fled the scene, defendant admitted it was his immediate reaction to shoot in response to the victim's grabbing him, and justification was a question of fact for the jury to resolve. *Jimmerson v. State*, 2019 Ark. App. 578, 590 S.W.3d 764 (2019).

State presented sufficient evidence to negate defendant's self-defense claim because witnesses testified that defendant pulled a gun and shot the victim without

provocation and that the victim did not have a gun and did not attempt to rob defendant, defendant admitted that he shot the victim and then drowned him in a

lake, and there was evidence that, after killing the victim, defendant attempted to hide from the police and lied to them. *Bailey v. State*, 2021 Ark. App. 38 (2021).

CHAPTER 3 INCHOATE OFFENSES

SUBCHAPTER 2 — CRIMINAL ATTEMPT

5-3-201. Conduct constituting attempt.

CASE NOTES

ANALYSIS

Attempted Murder.
Attempted Sexual Assault.

Attempted Murder.

Substantial evidence supported the verdict convicting defendant of attempted first-degree murder because at trial, both victims testified that defendant was directly in front of a truck when he began shooting, emptying his pistol, and that the bullets were within inches of where they were sitting. *Blakes v. State*, 2021 Ark. App. 32 (2021).

Although the order correctly noted that defendant was sentenced to 240 months for each attempted murder conviction and that they ran consecutively, the total time to be served for all offenses was listed as 240 months; therefore, the case was remanded for the circuit court to correct the sentencing order *nunc pro tunc* to reflect a

total time of 480 months. *Blakes v. State*, 2021 Ark. App. 32 (2021).

Attempted Sexual Assault.

Defendant was charged with second-degree sexual assault but convicted of the lesser-included offense of attempted second-degree sexual assault and his sufficiency argument was not preserved for review; defendant's directed-verdict motion, which the trial court denied, pertained to the completed offense of second-degree sexual assault, and not its attempt, and to the extent the "mens rea" argument was even preserved, the jury could assume that defendant's purposeful acts of touching the 16-year-old victim's vagina and attempting to lift her shirt, combined with the questions he was asking her, were attempts to have sexual contact with her for his sexual gratification. *Perea v. State*, 2019 Ark. App. 426, 586 S.W.3d 690 (2019).

SUBCHAPTER 4 — CRIMINAL CONSPIRACY

5-3-401. Conduct constituting conspiracy.

CASE NOTES

Evidence.

Evidence was sufficient to support defendant's conviction of conspiracy to deliver where a confidential informant bought methamphetamine in a transaction that occurred in a vehicle occupied by defendant driver and the codefendant; the

jury could reasonably conclude that defendant and codefendant were working together to deliver methamphetamine and that defendant assisted in that effort. *Baker v. State*, 2019 Ark. App. 515, 588 S.W.3d 844 (2019).

CHAPTER 4

DISPOSITION OF OFFENDERS

SUBCHAPTER 1 — GENERAL PROVISIONS

5-4-103. Sentencing — Role of jury and court.

CASE NOTES

Authority of Court.

After the jury's confusion resulted in the jury returning two verdict forms, one recommending an alternative sentence of probation without specifying a term and the other recommending only a fine, there was no error when the circuit court accepted a sentencing agreement allowing the court to sentence defendant to a term of years of probation rather than resubmitting the matter to the jury. *Barfield v. State*, 2019 Ark. App. 501, 588 S.W.3d 412 (2019).

After the jury's confusion resulted in the jury returning two verdict forms, one recommending an alternative sentence of

probation without specifying a term and the other recommending only a fine, the circuit court did not abuse its discretion in sentencing defendant to 10 years' probation and imposing a \$3,500 fine; defense counsel agreed to allow the court to sentence defendant to a term of years of probation rather than resubmitting the matter to the jury and the circuit court accepted the jury's alternative sentencing recommendation of probation and expressly advised defendant that the fine was imposed as a condition of the probation. *Barfield v. State*, 2019 Ark. App. 501, 588 S.W.3d 412 (2019).

SUBCHAPTER 2 — FINES, COSTS, AND RESTITUTION

5-4-205. Restitution.

CASE NOTES

ANALYSIS

Revocation Improper.
Revocation Proper.

Revocation Improper.

Trial court erred by revoking defendant's suspended imposition of sentence and sentencing him to 72 months' confinement because the State failed to meet its burden to prove defendant's willful and inexcusable failure to pay restitution as ordered; it was undisputed that defendant was homeless, seriously ill, and eating out of dumpsters, and the State offered no evidence of defendant's other sources of income, assets, or expenses because there were none. *Lawrence v. State*, 2020 Ark. App. 285, 600 S.W.3d 670 (2020).

Revocation Proper.

Revocation of probation and suspended imposition of sentence upheld. *Webster v. State*, 2019 Ark. App. 454, 588 S.W.3d 95 (2019).

Circuit court's decision to revoke defendant's probation was not clearly against the preponderance of the evidence due to defendant's failure to pay monthly restitution as ordered; the State showed the nonpayment was willful based on evidence defendant's disability income exceeded her expenses, which included non-essential items, including cable television. *Young v. State*, 2019 Ark. App. 580, 591 S.W.3d 385 (2019).

SUBCHAPTER 3 — SUSPENSION OR PROBATION

5-4-303. Conditions of suspension or probation.

CASE NOTES

ANALYSIS

Statement of Conditions.
Written Notice.

Statement of Conditions.

Circuit court did not abuse its discretion by admitting into evidence terms and conditions of probation that contained a scrivener's error. Defendant provided no authority to support his claim that the alleged failure to explicitly set forth the conditions rendered the conditions inadmissible. *Reno v. State*, 2020 Ark. App. 403, 607 S.W.3d 184 (2020).

Written Notice.

Contrary to defendant's argument on appeal of the revocation of his suspended imposition of sentence, the requirement in subsection (e) of this section concerning a written statement is not an issue of subject-matter jurisdiction that can be raised at any time; instead, defendant waived the argument by not objecting on that basis at the revocation hearing. *Gilbreth v. State*, 2020 Ark. App. 86, 596 S.W.3d 29 (2020).

5-4-322. District court or city court — Probation — Fees and fines authorized.

CASE NOTES

Judicial Immunity.

In a private probation company's 42 U.S.C. § 1983 action, stemming from two Craighead County district court judges' implementation of an amnesty program forgiving probation fees, the judges were entitled to judicial immunity because such

action was related to district courts' authorized functions; Arkansas law provided that the district courts had jurisdiction to modify or dismiss probation sentences and conditions of misdemeanor offenders. *Justice Network Inc. v. Craighead Cty.*, 931 F.3d 753 (8th Cir. 2019).

SUBCHAPTER 4 — IMPRISONMENT

5-4-401. Sentence.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Anthony L. McMullen, A Proposal to Change Sen-

tencing Appeals in Arkansas, 40 U. Ark. Little Rock L. Rev. 231 (2017).

CASE NOTES

Propriety of Sentence.

Defendant's sentence for 26 years for residential burglary and theft of property worth more than \$1,000 but less than

\$5,000 was not excessive because, while at the maximum, the sentence was within the statutory range. *Bass v. State*, 2019 Ark. App. 407 (2019).

5-4-403. Multiple sentences — Concurrent and consecutive terms.

CASE NOTES

ANALYSIS

Consecutive Sentences.
Discretion of Court.

Consecutive Sentences.

Even though the jury recommended concurrent sentences, there was no reversible error in the trial court's imposition of consecutive sentences for the terroristic acts convictions, to run consecutively to the first-degree murder life sentence, because the trial court was not bound by the jury's recommendation

and the written order imposing consecutive sentences controlled over the trial court's oral ruling. *Ellis v. State*, 2019 Ark. 286, 585 S.W.3d 661 (2019).

Discretion of Court.

It is well settled that it is within the discretion of the circuit court to decide whether a defendant's sentences run concurrently or consecutively, and defendant bears the heavy burden to establish that the circuit court abused or failed to exercise that discretion. *Clark v. State*, 2019 Ark. App. 362, 584 S.W.3d 680 (2019).

5-4-404. Credit for time spent in custody.

CASE NOTES

ANALYSIS

Appeal Not Moot.
Entitlement to Credit.
Preservation for Review.

Appeal Not Moot.

Even assuming that defendant was released on parole, his appeal concerning jail-time credit was not moot because the resolution of the issue on appeal would have necessarily affected the duration of his parole as well as his prison-time exposure in the event his parole was revoked. *Polston v. State*, 2020 Ark. App. 530 (2020).

Entitlement to Credit.

Defendant did not demonstrate that he was entitled to an additional 100 days of jail-time credit; however, defendant was entitled to an additional 50 days' jail-time credit, which was the number of days between the date of his original arrest and the date he signed the terms and conditions of probation. *Howard v. State*, 2019 Ark. App. 604, 592 S.W.3d 246 (2019).

When defendant's probation was revoked, he was entitled to additional jail-time credit for the 228 days spent in custody on the drug charge to which he eventually pleaded guilty and was placed on probation. The jail-time credit was

then reduced for the 60 days the trial court had ordered defendant to serve in jail as a condition of the probation and because of defendant's nonpayment of court costs. *Polston v. State*, 2020 Ark. App. 530 (2020).

Preservation for Review.

Because defendant did not request jail-time credit below, either directly or in an Ark. R. Crim. P. 37 petition, his claim was not properly preserved and could not be raised for the first time on appeal. *Weatherford v. State*, 2019 Ark. App. 536, 590 S.W.3d 172 (2019).

Even though defendant claimed his sentence was illegal, and could be raised for the first time on appeal because the circuit court's failure to award jail-time credit would require him to serve more than the maximum amount of time designated in the statutes for his offenses, defendant's sentence was not illegal on its face because the sentence was within the maximum prescribed by law; instead, a complaint for jail-time credit is a request for modification of a sentence imposed in an illegal manner. *Weatherford v. State*, 2019 Ark. App. 536, 590 S.W.3d 172 (2019).

Although defendant did not articulate a specific amount of jail-time credit in the lower court, his argument on appeal was preserved because he did motion the lower

court for jail-time credit. *Howard v. State*, 2019 Ark. App. 604, 592 S.W.3d 246 (2019).

SUBCHAPTER 5 — EXTENDED TERM OF IMPRISONMENT

5-4-501. Habitual offenders — Sentencing for felony.

CASE NOTES

ANALYSIS

Convictions.
—Tried As Adult.

Convictions.

—Tried As Adult.

Defendant's habitual offender sentence to a term of life imprisonment was af-

firmed where he had committed two prior violent felonies as a minor but was tried as an adult, those prior convictions were properly admitted, and defendant and the State acknowledged that defendant would receive an automatic life sentence for being a "three striker" under this section. *Price v. State*, 2019 Ark. 323, 588 S.W.3d 1 (2019).

5-4-504. Habitual offenders — Proof of previous conviction.

CASE NOTES

Proof.

Circuit court did not abuse its discretion in admitting the Department of Correction pen pack and an uncertified copy of a court of appeals opinion for sentencing-enhancement purposes; although the pen pack incorrectly reflected a guilty plea to two prior felonies, it included defendant's prior convictions, offense dates, sentencing dates, felony classifications, and sentences for each conviction, and the appel-

late opinion showed that the conviction and sentence were affirmed. Although neither of the documents strictly complied with subsection (b) of this section, the documents did satisfy the circuit court beyond a reasonable doubt under subsection (a) of this section that defendant had been found guilty of the prior felonies. *Rayburn v. State*, 2019 Ark. 254, 583 S.W.3d 385 (2019).

SUBCHAPTER 6 — TRIAL AND SENTENCE — CAPITAL MURDER

5-4-603. Findings required for death sentence — Harmless error review.

CASE NOTES

Jury Instructions.

At the Miller resentencing hearing of appellant, who had received a sentence of life without parole as a juvenile offender in 1980, the circuit court properly rejected appellant's proffered jury instructions because the instructions would have asked

the jury to make findings that are required only in death cases, and appellant was facing a sentence of life on resentencing. *Hundley v. State*, 2020 Ark. 89, 594 S.W.3d 60 (2020).

Cited: *Grubbs v. State*, 2020 Ark. 42, 592 S.W.3d 688 (2020).

5-4-604. Aggravating circumstances.**CASE NOTES****ANALYSIS**

Great Risk of Death to One Other Than Victim.

Unborn Child.

Victim Impact Evidence.

Great Risk of Death to One Other Than Victim.

Jury did not have to resort to speculation or conjecture to conclude that defendant knowingly placed an individual in great risk of death, as defendant fired his gun twice in her immediate direction and the second shot hit her in the arm. Defendant knew that the individual was standing next to another person, and knew that he was employing deadly force, having just killed his wife. Accordingly, the circuit court did not err in submitting that aggravating circumstance to the jury. *Reid v. State*, 2019 Ark. 363, 588 S.W.3d 725 (2019).

Unborn Child.

In denying defendant's petition for post-conviction relief after he was sentenced to

death for capital murder, the circuit court failed to properly construe § 5-1-102 and this section strictly and in the defendant's favor when it extended the "unborn child" part of the definition of "person" found in § 5-1-102(13)(B) to this section, a sentencing statute. Construing the statutes strictly, as required, the circuit court erred in presenting to the jury the death of the victim's unborn child as an aggravating factor, and defendant's trial attorneys were ineffective when they abandoned the argument. *Smith v. State*, 2020 Ark. 410 (2020).

Victim Impact Evidence.

In a capital murder case, the State did not suggest that victim-impact evidence should be viewed as an aggravating circumstance. Instead, during closing argument, the State urged the jury to weigh defendant's emotional distress against the emotional distress he inflicted on his family. The circuit court did not abuse its discretion in allowing the State's argument. *Reid v. State*, 2019 Ark. 363, 588 S.W.3d 725 (2019).

5-4-618. Defendants with intellectual disabilities.**CASE NOTES**

Appellate Review.

Defendant's argument that he was ineligible for execution because his expert diagnosed him with mild intellectual dis-

ability was not ripe for review because an execution date had not yet been set. *Lard v. State*, 2020 Ark. 110, 595 S.W.3d 355 (2020).

CHAPTER 5**DISPOSITION OF CONTRABAND AND SEIZED PROPERTY****SUBCHAPTER 1 — GENERAL PROVISIONS****5-5-101. Disposition of contraband and seized property.****CASE NOTES**

Burden of Proof.

When the rightful owner of seized property files a motion to have the property

returned and the State claims the seized property is contraband, the burden of proof is on the State to prove by a prepon-

derance of the evidence that the seized property is contraband. *Herron v. State*, 2019 Ark. App. 367, 583 S.W.3d 408 (2019).

Defendant was entitled to the return of seized property—a shotgun—because the circuit court clearly erred in finding that the shotgun was contraband; the State,

which called no witnesses and presented no evidence in support of its contention that the shotgun had been used in the commission of a felony, failed to meet its burden of proving that the shotgun was contraband. *Herron v. State*, 2019 Ark. App. 367, 583 S.W.3d 408 (2019).

SUBTITLE 2. OFFENSES AGAINST THE PERSON

CHAPTER 10

HOMICIDE

5-10-101. Capital murder.

CASE NOTES

ANALYSIS

Accomplice.

Evidence.

Indifference to Human Life.

Accomplice.

Denying defendant's motion for directed verdict on the capital felony murder and aggravated robbery charges was not error where the State presented evidence that two people were involved in the crime, the vehicle used in the crime belonged to defendant's girlfriend, and a handgun that forensically matched the bullets and shell casings found at the crime scene as well as a nearly empty bottle of numerically related whiskey were found in defendant's apartment. The jury was free to conclude that defendant was the shooter or the shooter's accomplice. *Finley v. State*, 2019 Ark. 336, 587 S.W.3d 223 (2019).

Evidence.

Evidence was sufficient to convict defendant of capital murder with the premeditated and deliberated purpose of causing the victim's death because the accomplices' testimony was corroborated by defendant's statement to police, forensic evidence, and testimony from other witnesses; the medical examiner (ME) testified that the victim died from internal blood loss caused by multiple blunt force injuries; defendant instructed the accomplices to beat the victim with baseball

bats; the ME found oil on the victim's inner thighs and in her vagina, which was consistent with chainsaw oil; and defendant told the accomplices to use chainsaw oil as a lubricant and to shove a baseball bat inside the victim's vagina. *Chumley v. State*, 2019 Ark. 383, 590 S.W.3d 154 (2019).

Evidence was sufficient to convict defendant of capital murder because he told law enforcement that the three-month-old child had been "real whiny" and spitting up a lot the week prior to his death, but defendant did not seek medical attention and refused his wife's request to take the child to the doctor; the State's two medical experts both testified that defendant's version of events was not supported by the medical evidence and was improbable in light of the child's numerous injuries, and that the injuries were not consistent with defendant's single-crush-event version of events; and defendant stated it was possible that he might have accidentally injured the child, but that he did not seek medical help for the child. *Atwood v. State*, 2020 Ark. 283 (2020).

Indifference to Human Life.

There was sufficient evidence to support defendant's conviction for capital murder under subdivision (a)(10) of this section, the capital murder statute, as defendant pulled out a gun and raised that gun to point it at the vehicle that was occupied by the victim and his daughter, the gun discharged, and the forensic evidence demon-

strated that the path of the bullet was directed toward the victim's vehicle. While there was testimony that defendant claimed he did not mean to kill the victim, an intent to kill was not required under subdivision (a)(10) of this section. *Thomas v. State*, 2020 Ark. 154, 598 S.W.3d 41 (2020).

There was no merit in defendant's argu-

ment that the extreme-indifference-to-the-value-of-human-life element of subdivision (a)(10) of this section was not proved beyond speculation and conjecture, as the act of firing a gun into an occupied vehicle that was being driven down the road was sufficient to support the jury's verdict. *Thomas v. State*, 2020 Ark. 154, 598 S.W.3d 41 (2020).

5-10-102. Murder in the first degree.

CASE NOTES

ANALYSIS

Accomplice.
Attempted Murder.
Defenses.
Evidence.
Furtherance or Perpetration of Felony.
Instructions.
Intent.
—Evidence.
—Knowingly.
Sentence.

Accomplice.

Sufficient evidence supported defendant's conviction for the first-degree murder of her four-year-old daughter because the jury—which viewed autopsy photographs and heard testimony describing the numerous bruises and other injuries covering the victim's body—could have concluded that defendant knew or had reasonable cause to know of the abuse of the victim by defendant's boyfriend and failed to make a proper effort to prevent it, thus making defendant guilty as an accomplice. *Dycus v. State*, 2019 Ark. App. 385, 585 S.W.3d 167 (2019).

Attempted Murder.

Substantial evidence supported the verdict convicting defendant of attempted first-degree murder because at trial, both victims testified that defendant was directly in front of a truck when he began shooting, emptying his pistol, and that the bullets were within inches of where they were sitting. *Blakes v. State*, 2021 Ark. App. 32 (2021).

Defenses.

In a first-degree murder trial, there was substantial evidence supporting the jury's verdict that the State disproved defen-

dant's justification defense; there was no other weapon found in the car with the victim, who was shot in the head from behind, defendant immediately fled the scene, defendant admitted it was his immediate reaction to shoot in response to the victim's grabbing him, and justification was a question of fact for the jury to resolve. *Jimmerson v. State*, 2019 Ark. App. 578, 590 S.W.3d 764 (2019).

Substantial evidence supported the jury's verdict that the State negated defendant's justification defense because (1) defendant approached the victim and pulled a gun out of his waistband, and, (2) considering eyewitness testimony and a surveillance video, a jury could find that defendant's belief that he was justified in using deadly force was not reasonable. *Brown v. State*, 2020 Ark. App. 198, 595 S.W.3d 456 (2020).

Evidence.

Substantial evidence supported defendant's first-degree felony murder conviction where the jury heard eyewitness testimony that he facilitated, encouraged, and participated in the victim's murder during the course of the aggravated robbery that evening at a gambling house. *Price v. State*, 2019 Ark. 323, 588 S.W.3d 1 (2019).

Even though another person initially confessed to the murder, substantial evidence supported a first-degree murder conviction against defendant where the other person testified, *inter alia*, that she heard a shot and that defendant had dragged the victim's body, positioned the victim's truck over the body, and lit the truck on fire, and another witness testified that defendant had asked for help acquiring a gun earlier that day and that

he saw defendant at the crime scene the afternoon of the murder. *Terrell v. State*, 2019 Ark. App. 433, 587 S.W.3d 594 (2019).

Evidence was sufficient to support defendant's first-degree murder conviction because the jury could have found that he acted with the purpose of causing the victim's death, despite defendant's contentions concerning PTSD; two bullet fragments recovered from the victim's brain were fired from defendant's gun, and defendant admitted that he shot his gun due to a disagreement with the victim, then defendant fled the scene. *Jimmerson v. State*, 2019 Ark. App. 578, 590 S.W.3d 764 (2019).

Evidence that defendant's fingerprints were found on the victim's truck, the victim's blood was found on the jacket defendant was wearing on the evening of the murder, defendant told another that he had been in a fight with the victim and confessed to killing the victim with a knife, and that the victim was stabbed to death seven times was sufficient to support defendant's conviction for first-degree murder. *Halliburton v. State*, 2020 Ark. 101, 594 S.W.3d 856 (2020).

Trial court properly denied defendant's motion for a directed verdict because sufficient evidence supported defendant's convictions for first-degree murder, aggravated robbery, and theft of property where defendant and his accomplice manifested an extreme indifference to the value of human life when they both pointed the victim's guns at the victim, the accomplice shot the victim, and defendant and the accomplice fled with the victim's guns and marijuana. *Terry v. State*, 2020 Ark. 202, 600 S.W.3d 575 (2020).

Substantial evidence supported defendant's first-degree murder conviction because the jury reasonably could have inferred from the testimony of witnesses — that defendant shot the victim, that defendant threatened witnesses, and that the victim's hands were found in the victim's pockets — as well as the type of weapon used, the manner of its use, and the location of the victim's wound, that defendant purposely killed the victim. Furthermore, defendant's voluntary intoxication did not negate criminal intent. *Hayes v. State*, 2020 Ark. 297 (2020).

Substantial evidence supported defendant's conviction for first-degree murder,

including evidence that the physical evidence did not support defendant's claim that the victim committed suicide, gunshot residue was found on both legs of defendant's jeans, and the medical examiner testified that the gun was not fired at close range and that the gunshot wound was on the back, left side of the victim's head, while the pistol was found next to her right hand. *Armstrong v. State*, 2020 Ark. 309, 607 S.W.3d 491 (2020).

Sufficient evidence supported defendant's conviction by a jury for the first-degree murder of her 19-month-old child under subdivision (a)(3) of this section; the child was determined to have died from blunt-force injuries and suffocation and the mother's only explanation for the child's internal injuries was discounted by the forensic pathologist who performed the autopsy. *Jenkins v. State*, 2020 Ark. App. 45, 593 S.W.3d 51 (2020).

Furtherance or Perpetration of Felony.

Evidence was sufficient to support defendant's conviction of first-degree felony murder, as there was substantial evidence that defendant, in the course of and in furtherance of committing the terroristic act of shooting at an occupied vehicle with the intent to cause property damage, caused the victim's death. *Holmes v. State*, 2019 Ark. App. 508, 588 S.W.3d 835 (2019).

Instructions.

Defendant, charged with first-degree murder, was not entitled to a second-degree murder instruction because the evidence consistently showed defendant shot the victim in the head at close range in the absence of any provocation. *Dixon v. State*, 2019 Ark. 245, 581 S.W.3d 505 (2019).

Defendant, charged with first-degree murder, was not entitled to a manslaughter instruction because defendant's interactions with a third person after defendant committed a murder did not show what defendant's mental state was when he shot the victim. *Dixon v. State*, 2019 Ark. 245, 581 S.W.3d 505 (2019).

Intent.

—Evidence.

In a first-degree murder case, defendant's motions for directed verdict were

properly denied as there was sufficient evidence that defendant acted with the purpose of causing the death of the victim because there was testimony that defendant drew a gun and immediately shot the victim in the neck without warning; and the jury was shown the video footage of the altercation at the club. *Jaquize v. State*, 2019 Ark. 259, 584 S.W.3d 236 (2019).

—**Knowingly.**

Evidence was sufficient to support defendant's conviction of murder in the first degree under subdivision (a)(3) of this section where the victim was the youngest of defendant's children, a forensic examiner and experts testified that he had died of starvation, evidence showed that defendant had withheld formula from him, and defendant had previously cared for the victim's five other premature siblings, all

of whom survived infancy; there was substantial evidence presented to support a conclusion that defendant, who had an IQ of 75, was aware of the risk caused by the infant's obvious malnourishment and that she was aware that it was practically certain her conduct would cause the infant's death. *Bowman v. State*, 2019 Ark. App. 469, 588 S.W.3d 129 (2019).

Sentence.

Although the order correctly noted that defendant was sentenced to 240 months for each attempted-murder conviction and that they ran consecutively, the total time to be served for all offenses was listed as 240 months; therefore, the case was remanded for the circuit court to correct the sentencing order *nunc pro tunc* to reflect a total time of 480 months. *Blakes v. State*, 2021 Ark. App. 32 (2021).

5-10-103. Murder in the second degree.

CASE NOTES

ANALYSIS

Evidence.

Instructions.

Evidence.

Substantial evidence supported the jury's verdict convicting defendant of the second-degree murder of a six-month-old child. The child's death was due to violent shaking, and the jury could reasonably infer that defendant was the person responsible. *Dulle v. State*, 2019 Ark. App. 378, 582 S.W.3d 28 (2019).

Circumstantial evidence was sufficient to support defendant's second-degree murder conviction; he was the last person to be with the victim before her death, after the victim's family lost contact with her, defendant had her car keys and the cell phone her mother had loaned her, and defendant told the victim's family and friends three different stories about where she was. *Gonzales v. State*, 2019 Ark. App. 600, 589 S.W.3d 505 (2019).

Defendant's choking of another person for 15 seconds years prior was not independently relevant to show knowledge, intent, or absence of mistake; it was clear that the State used the prior act evidence to argue that because defendant had choked a previous girlfriend, he was acting in conformity with his prior bad acts and strangled the victim, which was strictly prohibited under Ark. R. Evid. 404(b). *Gonzales v. State*, 2019 Ark. App. 600, 589 S.W.3d 505 (2019).

State's attempt to convince the jury that defendant had to be guilty of strangulation based on the evidence that he previously choked his former girlfriend in an unrelated domestic dispute was the embodiment of the danger of unfair prejudice contemplated by Ark. R. Evid. 403, and the admission was not harmless. While the circumstantial evidence was sufficient to support a conviction, it was hardly overwhelming. *Gonzales v. State*, 2019 Ark. App. 600, 589 S.W.3d 505 (2019).

Evidence was sufficient to sustain defendant's convictions for second-degree murder under the corpus delicti rule, § 16-89-111(d), because defendant's confession was sufficiently corroborated; defendant confessed to killing the victims with a hammer and then disposing of the murder weapon, the victims' bodies were recovered, and both of the victims died from blunt-force trauma to the head, which was not an accident according to a medical examiner who performed autopsies of the victims. *Watts v. State*, 2020 Ark. App. 218, 600 S.W.3d 618 (2020).

Instructions.

Defendant, charged with first-degree murder, was not entitled to a second-degree murder instruction because the evidence consistently showed defendant shot the victim in the head at close range in the absence of any provocation. *Dixon v. State*, 2019 Ark. 245, 581 S.W.3d 505 (2019).

5-10-104. Manslaughter.

CASE NOTES

Instructions.

Defendant, charged with first-degree murder, was not entitled to a manslaughter instruction because defendant's interactions with a third person after defendant committed a murder did not show what defendant's mental state was when he shot the victim. *Dixon v. State*, 2019 Ark. 245, 581 S.W.3d 505 (2019).

5-10-105. Negligent homicide.

CASE NOTES

ANALYSIS

Evidence.

Lesser-Included Offenses.

Evidence.

Substantial evidence did not support the verdict of guilty of four counts of negligent homicide where there was no evidence that defendant was speeding, driving erratically, under the influence of alcohol, or using a phone when the accident occurred, he did not receive a traffic citation for his conduct, and the State failed to present any evidence that defendant's purpose for bending over, given the situation, amounted to a gross deviation from the standard of care. *Ledwell v.*

State, 2019 Ark. 334, 587 S.W.3d 536 (2019).

Lesser-Included Offenses.

Trial court did not err in failing to instruct the jury on negligent homicide because it was not a lesser-included offense of unlawful discharge of a firearm from a vehicle, and defendant's proffered instruction did not meet any of the three alternative tests set out in § 5-1-110 where the culpable mental state for negligent homicide was directed at the act of causing the death of another person and the culpable mental state for first-degree unlawful discharge of a firearm from a vehicle was directed at the act of discharging the firearm. *Webb v. State*, 2019 Ark. App. 436, 587 S.W.3d 252 (2019).

CHAPTER 11

KIDNAPPING AND RELATED OFFENSES

5-11-102. Kidnapping.

CASE NOTES

ANALYSIS

Class of Felony.
Voluntary Release of Victim.

Class of Felony.

Defendant's proffered jury instruction on Class B felony kidnapping under subdivision (b)(2) of this section was properly rejected where the victim was left blindfolded, bleeding, and alone in a debilitating physical condition in her home in a rural area. *Rickman v. State*, 2020 Ark. 138, 597 S.W.3d 622 (2020).

Voluntary Release of Victim.

Defendant was properly convicted by a jury of Class Y felony kidnapping and the

circuit court properly admitted prior-bad-act evidence because the jury could have reasonably found that defendant failed to carry his burden to establish that he ultimately left the kidnapping victim "in a safe place" when he left her with a debilitating leg wound in an unfamiliar residence with unfamiliar people, and defendant's similar behavior two weeks after the kidnapping, but before his arrest, was relevant, its prejudice was outweighed by the probative value, and it went to defendant's plan, knowledge, and lack of accident or mistake. *Perez v. State*, 2020 Ark. App. 367, 607 S.W.3d 507 (2020).

5-11-103. False imprisonment in the first degree.

CASE NOTES

Evidence Sufficient.

Substantial evidence supported the false imprisonment conviction where the victim testified that defendant refused to

leave her bedroom, hit her, put a BB gun in her mouth, and held a knife to her throat. *Williams v. State*, 2020 Ark. App. 560 (2020).

CHAPTER 12

ROBBERY

5-12-102. Robbery.

CASE NOTES

Sufficiency of Evidence.

Evidence was sufficient to convict defendant of robbery as a party because her accomplice liability began with her concession on appeal that she voluntarily drove the accomplices to the theater with the knowledge that she would be committing at least one crime — to get marijuana; the accomplices planned and discussed the robbery from the back seat of defendant's vehicle; the conversation in-

cluded her brother, who was in the front seat beside her; and, although she denied hearing the plan or taking part in it, she told police that one of the accomplices stated that they were just going to take the marijuana. *West v. State*, 2020 Ark. App. 522 (2020).

Circuit court properly denied defendant's motions for a directed verdict because sufficient evidence supported his convictions for robbery and theft of prop-

erty where defendant picked up a phone charger and concealed it behind his cell phone as he continued to shop throughout a grocery store, he put the charger in his female companion's purse without first paying for it, and when confronted by one

of the store's loss-prevention officers, he handed over the charger and attempted to flee, resulting in a struggle with two of the loss-prevention officers. *Hester v. State*, 2020 Ark. App. 571 (2020).

5-12-103. Aggravated robbery.

CASE NOTES

ANALYSIS

Accomplice.
Evidence.
Harmless Error.
Trial Proceedings.

Accomplice.

Denying defendant's motion for directed verdict on the capital felony murder and aggravated robbery charges was not error where the State presented evidence that two people were involved in the crime, the vehicle used in the crime belonged to defendant's girlfriend, and a handgun that forensically matched the bullets and shell casings found at the crime scene as well as a nearly empty bottle of numerically related whiskey were found in defendant's apartment. The jury was free to conclude that defendant was the shooter or the shooter's accomplice. *Finley v. State*, 2019 Ark. 336, 587 S.W.3d 223 (2019).

Evidence was insufficient to support defendant's convictions for aggravated robbery and first-degree felony murder because there was no evidence that the victim was the victim of an intended theft apart from the accomplice's testimony. The State showed only that defendant was with the accomplice and another alleged participant an hour before the victim died and that defendant was with another person in a crowd of gawkers at the location where the victim died. *Clark v. State*, 2019 Ark. App. 455, 588 S.W.3d 64 (2019).

Evidence.

Substantial evidence supported an aggravated robbery conviction under an accomplice liability theory where a victim's testimony showed that defendant and an accomplice stole money from the victim, were armed with a deadly weapon, and inflicted death upon another victim. Price

v. State, 2019 Ark. 323, 588 S.W.3d 1 (2019).

Defendant's convictions for aggravated robbery, theft, and possession of a firearm by certain persons were supported by substantial evidence; although defendant contended that he and the second victim struggled for control of the gun, not the money, evidence was presented that even though defendant had already obtained the money from one victim, he dropped the bag of money during his struggle with a second victim, defendant pushed the second victim multiple times to get him away from the bag and then picked it up and left the store as he pointed the gun at the second victim, thereby exercising unauthorized control over another's property with the purpose of depriving the owner of the property. *McCray v. State*, 2020 Ark. 172, 598 S.W.3d 509 (2020).

Trial court properly denied defendant's motion for a directed verdict because sufficient evidence supported defendant's convictions for first-degree murder, aggravated robbery, and theft of property where defendant and his accomplice manifested an extreme indifference to the value of human life when they both pointed the victim's guns at the victim, the accomplice shot the victim, and defendant and the accomplice fled with the victim's guns and marijuana. *Terry v. State*, 2020 Ark. 202, 600 S.W.3d 575 (2020).

Evidence was sufficient to convict defendant of aggravated robbery based on an attempt to inflict death or serious physical injury because the victim went to defendant's house to purchase drugs; when she arrived, she agreed to give defendant and two other individuals a ride; as she was driving, defendant told her to stop the car and began choking her and punching her; defendant and one of the other individuals then dragged the victim from the car to a ditch and continued to beat her; they

placed her back in her vehicle; defendant then threw the victim out of a moving vehicle, and drove away; and there was evidence that the victim had a wound on her arm, which appeared to have an entry and an exit point, and was treated as a gunshot wound. *Washington v. State*, 2020 Ark. App. 317, 602 S.W.3d 137 (2020).

Evidence was sufficient to convict defendant of aggravated robbery and accomplice to tampering with physical evidence because the victim met with defendant, went with defendant to an ATM to withdraw \$80 in cash shortly before the altercation between them, was beaten unconscious by defendant, and was found within a few hours severely injured, unconscious, and alone in the parking lot with no money or identification on him; defendant admitted to beating the victim; and defendant admitted knowledge of his girlfriend's having thrown his shoes that had the victim's blood on them in a dumpster. *Green v. State*, 2020 Ark. App. 320, 601 S.W.3d 463 (2020).

Trial court did not err in denying defendant's motion for a directed verdict because the victim's testimony that defendant was a passenger in the white car and that he was "one hundred percent positive" that defendant was the person who robbed him and a witness's testimony that

he unwittingly sold a stolen phone given to him by defendant at defendant's request, not knowing the phone was stolen, was sufficient to support defendant's aggravated robbery conviction. *Murphy v. State*, 2020 Ark. App. 529 (2020).

Harmless Error.

Although the search warrant was invalid with respect to the cigarettes, failure to suppress the cigarettes constituted harmless error. Excluding the cigarettes, the jury nevertheless had overwhelming evidence of defendant's commercial burglary and aggravated robbery offenses; in part, defendant was identified from surveillance video and a search of his vehicle revealed ammunition of the type used by the gun in the robberies, as well as a bandana that contained his DNA. *Jemison v. State*, 2019 Ark. App. 475, 588 S.W.3d 359 (2019).

Trial Proceedings.

Circuit court properly convicted defendant of aggravated robbery where defendant's directed-verdict motions were not specific regarding which elements were not met by the State's evidence nor did they specify the elements of aggravated robbery; defendant simply argued that none of the elements were met. *Avery v. State*, 2019 Ark. App. 405, 585 S.W.3d 742 (2019).

CHAPTER 13

ASSAULT AND BATTERY

SUBCHAPTER 2 — OFFENSES GENERALLY

5-13-201. Battery in the first degree.

CASE NOTES

ANALYSIS

Culpable Mental State.
Evidence.
Second-degree Battery.

Culpable Mental State.

Substantial evidence supported defendant's first-degree battery conviction under subdivision (a)(3) of this section arising out of a motor vehicle collision where

he had pled guilty to DWI, thereby admitting that he possessed the requisite intent; further, the presence of three different drugs in defendant's system (although there was no quantitative analysis) and the testimony showing that he drove at a high rate of speed, swerved in and out of traffic, crossed the center line, and struck the victim's vehicle head on without any indication of an attempt to apply his brakes demonstrated an extreme indiffer-

ence to the value of human life at the time of the wreck. *Turner v. State*, 2019 Ark. App. 476, 588 S.W.3d 375 (2019).

Evidence.

Evidence was sufficient to convict defendant of first-degree battery under subdivision (a)(3) of this section because he kicked the first officer twice in the face; the first officer sustained serious physical injuries as defendant broke his sinus bone and orbital bone, requiring surgery and a titanium plate to be permanently placed in his face; and the first officer continued to have double vision and numbness in his upper lip as a result. *Benton v. State*, 2020 Ark. App. 223, 599 S.W.3d 353 (2020).

Circuit court did not err by denying defendant's directed verdict motion because the evidence was sufficient to convict defendant of first-degree battery as defendant acted under circumstances manifesting extreme indifference to the value of human life; the child suffered burns to 36% of her body after defendant forcibly placed her into a bathtub of water hot enough to cause severe burns, the child's injuries indicated that she tried to protect herself, and the child was hospitalized for a month and underwent five surgeries. *Engeron v. State*, 2020 Ark. App. 246, 599 S.W.3d 153 (2020).

State presented sufficient evidence from which the jury could conclude that defendant was the person who battered his girlfriend's 18-month-old child because the girlfriend and the child's grandmother were convinced that defendant was the one who injured the son, other people who had access to the child denied having battered or abused him, and there was no evidence of physical abuse against him before or after the few months that defendant lived with him. *Lasley v. State*, 2021 Ark. App. 31 (2021).

Second-degree Battery.

Trial court did not abuse its discretion in ruling that defendant, charged with first-degree battery, was not entitled to a second-degree battery instruction under § 5-13-202(a)(1) because defendant provided no rational basis for a second-degree battery instruction, as (1) the victim's bullet wounds creating a substantial risk of death were a serious injury, (2) defendant's claim that the victim's injury was not serious was no basis for the instruction, as first- and second-degree battery both required a serious physical injury, and (3) evidence that defendant shot the victim in the neck and in the back as the victim fled showed intent to inflict serious physical injury. *Dixon v. State*, 2019 Ark. 245, 581 S.W.3d 505 (2019).

5-13-202. Battery in the second degree.

CASE NOTES

ANALYSIS

Crime of Violence.
Evidence.
Instructions.
Physical Injury.

Crime of Violence.

District court did not err in considering defendant's previous conviction for aiding and abetting distribution of methamphetamine as a controlled substance offense for purposes of career offender sentencing enhancement under federal law because aiding and abetting offenses are included in enhancement. In addition, the record of conviction demonstrated that defendant was convicted for accomplice to second-degree battery under subdivision (a)(1) of

this section, which includes as an element the use of physical force. *United States v. Garcia*, 946 F.3d 413 (8th Cir. 2019), cert. denied, — U.S. —, 141 S. Ct. 430, 208 L. Ed. 2d 127 (2020).

Evidence.

Evidence was sufficient to convict defendant of second-degree battery under subdivision (a)(4) of this section because defendant placed his hands around the second officer's throat; he attempted to strangle the second officer with a leash; he used his fingers to dig at the second officer's eyes in a deliberate attempt to gouge his eye out; and the second officer sustained a painful corneal abrasion on his eye. *Benton v. State*, 2020 Ark. App. 223, 599 S.W.3d 353 (2020).

Instructions.

Trial court did not abuse its discretion in ruling that defendant, charged with first-degree battery, was not entitled to a second-degree battery instruction under subdivision (a)(1) of this section because defendant provided no rational basis for a second-degree battery instruction, as (1) the victim's bullet wounds creating a substantial risk of death were a serious injury, (2) defendant's claim that the victim's injury was not serious was no basis for the instruction, as first- and second-degree battery both required a serious physical injury, and (3) evidence that defendant shot the victim in the neck and in

the back as the victim fled showed intent to inflict serious physical injury. *Dixon v. State*, 2019 Ark. 245, 581 S.W.3d 505 (2019).

Physical Injury.

Circuit court did not err in denying defendant's motion for directed verdict on the charge of battery in the second degree because the victim, a jailer, testified he suffered an abrasion on his forehead during the altercation with defendant; scratches and abrasions are sufficient to meet the definition of physical injury, and the jury was entitled to give credit to the victim's testimony. *Chambers v. State*, 2020 Ark. App. 54, 595 S.W.3d 371 (2020).

5-13-204. Aggravated assault.**CASE NOTES****ANALYSIS**

Defense or Justification.

Evidence.

—Pointing a Gun.

Defense or Justification.

In a bench trial resulting in defendant's convictions for aggravated assault on a family member and aggravated assault, the circuit court erred as a matter of law in refusing to consider the defense of justification by ruling that defendant could not present the inconsistent defenses of a general denial and justification; where there is evidence that would support a finding of self-defense, case law has held that a jury instruction is appropriate notwithstanding defendant's testimony that he did not commit the crime. Thus, the circuit court committed an error of law in ruling that defendant was required to choose between the defenses of general denial and justification. *Gray v. State*, 2019 Ark. App. 543, 590 S.W.3d 177 (2019).

Evidence.

There was sufficient evidence from which the jury could have found that defendant's conduct created "a substantial danger of death or serious physical injury" to a police officer to support the conviction for aggravated assault because

the evidence established that defendant was physically fighting and resisting an armed police officer who was unprepared to defend himself; the officer's gun could have discharged; and the officer was unable to complete defendant's arrest until another officer arrived to assist. *Stuart v. State*, 2020 Ark. App. 131, 596 S.W.3d 552 (2020).

—Pointing a Gun.

Substantial evidence supported defendant's aggravated assault conviction because the jury reasonably could have concluded that defendant created a substantial danger of death or physical injury under circumstances manifesting an extreme indifference to the value of human life when, after having shot another person, defendant ran after a witness with his pistol pointed at the witness. *Hayes v. State*, 2020 Ark. 297 (2020).

Substantial evidence supported defendant's aggravated assault conviction because the jury reasonably could have concluded that defendant created a substantial danger of death or physical injury under circumstances manifesting an extreme indifference to the value of human life when defendant pointed a 12-gauge shotgun containing slug rounds at the victim, even at a distance of 100 yards. *Hayes v. State*, 2020 Ark. 297 (2020).

SUBCHAPTER 3 — TERRORISTIC THREATS AND ACTS

5-13-301. Terroristic threatening.

CASE NOTES

ANALYSIS

Evidence.

—Sufficient.

Sufficient Threats.

Evidence.**—Sufficient.**

Based on the record before the appellate court, which included the victim's testimony in the bench trial about what transpired, and the standard of review, the State sufficiently established that defendant committed the crime of first-degree terroristic threatening. *Holmes v. State*, 2019 Ark. App. 384, 586 S.W.3d 183 (2019).

Substantial evidence supported defendant's first-degree terroristic threatening conviction because, in listening to a recorded phone call between defendant and the complainant, the jury reasonably could have inferred defendant's intent to purposely threaten to kill the complainant. Defendant told the complainant that defendant had just killed another person, threatened to fix the complainant, and repeatedly asked the complainant for the location of the complainant. *Hayes v. State*, 2020 Ark. 297 (2020).

In defendant's trial for first-degree terroristic threatening arising from a workplace incident, it was reasonable for the jury to conclude that defendant threatened the victim in order to terrorize him, in violation of subdivision (a)(1)(A) of this section, where multiple witnesses testified that defendant had pointed a pistol at the victim, the victim testified that as defendant aimed, he told him that he was "fixing to shoot", and the jurors were entitled to rely on their common knowledge

and life experiences to infer that, given the circumstances, defendant acted with the conscious objective to cause the victim terror. *Hughes v. State*, 2020 Ark. App. 114, 596 S.W.3d 58 (2020).

Substantial evidence supported defendant's terroristic threatening conviction where shortly after speaking to a police officer about a violation of a city ordinance, defendant made a Facebook post threatening to kill anyone who stepped on his property, he referenced a person was wearing a silver star on his chest, and admitted that afterward he researched on the internet ways to protect his property and that he was preparing to use deadly force to defend his property, his girlfriend, and himself; a new trial was required, however, because there was an insufficient investigation into whether defendant's willingness to proceed pro se was knowingly or intelligently asserted. *Pinney v. State*, 2020 Ark. App. 467, 609 S.W.3d 671 (2020).

When considering the natural consequences of defendant's acts in entering the victim's home, the jury could have presumed that defendant's threats were made with the purpose of terrorizing her; thus, substantial evidence supported the terroristic threatening conviction. *Williams v. State*, 2020 Ark. App. 560 (2020).

Sufficient Threats.

Sufficient evidence supported defendant's conviction for making terroristic threats based on defendant's Facebook posts threatening the lives of employees of the Veterans Administration because it was reasonable to take defendant's posts as a true threat, given defendant's military training. *Lilly v. State*, 2020 Ark. App. 88, 596 S.W.3d 509 (2020).

5-13-310. Terroristic act.

CASE NOTES

Sufficiency of Evidence.

Although defendant claimed that the only evidence of his intent was the statement he gave to police that the gun accidentally went off, the evidence was sufficient to support his conviction of a terroristic act because there was evidence that defendant honked his horn at the car in front of him at a stop sign, that the other driver honked back, and then defendant exited his vehicle and shot at the other vehicle, killing one of its occupants; in addition, defendant's attorney conceded during argument at trial that the evidence was sufficient to withstand a motion for

directed verdict as to the terroristic act. *Holmes v. State*, 2019 Ark. App. 508, 588 S.W.3d 835 (2019).

Circuit court did not err in denying defendant's motion to dismiss the charge of committing a terroristic act, as the State presented sufficient evidence that defendant shot the victim's vehicle, given the victim's testimony that she saw defendant wave a rod-like object outside his car window and immediately thereafter she heard a loud shot and her car window shattered. Further, defendant was arrested with a pellet gun in his vehicle. *Allen v. State*, 2021 Ark. App. 22 (2021).

CHAPTER 14 SEXUAL OFFENSES

SUBCHAPTER 1 — GENERAL PROVISIONS

5-14-101. Definitions.

CASE NOTES

Guardian.

For purposes of defendant's conviction for rape under § 5-14-103(a)(4), the testimony from the victim and his mother provided substantial evidence that defendant, who was the mother's boyfriend,

disciplined her children and supported the family financially, and was a person "who by virtue of a living arrangement was placed in an apparent position of power or authority over a minor". *Mabry v. State*, 2020 Ark. 72, 594 S.W.3d 39 (2020).

5-14-103. Rape.

CASE NOTES

ANALYSIS

Assistance of Counsel.
Evidence.

- Admissibility.
- Pedophile Exception.
- Sufficiency.

Forcible Compulsion or Consent.
Lesser-Included Offenses.

Assistance of Counsel.

Trial court did not abuse its discretion in denying postconviction relief because trial counsel was not ineffective for failing

to move for dismissal of the charge of second-degree sexual assault on double jeopardy grounds, as the State presented evidence of separate impulses comprising separate acts conforming with the definitions of rape and second-degree sexual assault. *Sorum v. State*, 2019 Ark. App. 354, 582 S.W.3d 18 (2019).

Trial court did not abuse its discretion in denying postconviction relief because trial counsel was not ineffective for failing to inform the jury that rape included the element of sexual gratification; there was testimony that counsel did not do away

with the element of sexual gratification but instead chose to focus the jury's attention on the element of penetration as a matter of trial strategy. *Sorum v. State*, 2019 Ark. App. 354, 582 S.W.3d 18 (2019).

Evidence.

—Admissibility.

Even though the trial court violated defendant's right to confrontation under the Sixth Amendment by allowing a substitute analyst to testify regarding the results of a DNA test performed by another analyst, the error was harmless beyond a reasonable doubt; the victim's vivid description of being raped repeatedly and painfully by defendant constituted sufficient evidence to sustain his convictions of rape and second-degree sexual assault. *Alejandro-Alvarez v. State*, 2019 Ark. App. 450, 587 S.W.3d 269 (2019).

—Pedophile Exception.

In a rape case under subdivision (a)(4) of this section, although the witness was a female and the victim in the present case was a male, and the defendant's actions were not identical in each instance, they were sufficiently similar to allow the witness's testimony pursuant to the pedophile exception; additionally, although the alleged sexual activity involving the witness occurred about 13 years before the trial, it was not so remote in time as to be improper. *Mabry v. State*, 2020 Ark. 72, 594 S.W.3d 39 (2020).

—Sufficiency.

In a case under subdivision (a)(3) of this section, defendant's challenge to the sufficiency of the evidence was not preserved because he made only a general directed verdict motion without specifying the respect in which the evidence was deficient; and, in any event, the victim's testimony was substantial evidence to support defendant's convictions and credibility determinations are within the jury's province. *Peoples v. State*, 2019 Ark. App. 559, 590 S.W.3d 783 (2019).

Trial court did not err when it denied defendant's motion for a directed verdict on the rape charges because the testimony from the victim and his mother provided substantial evidence that defendant, who was the mother's boyfriend, disciplined her children and supported the family

financially, and was a person "who by virtue of a living arrangement was placed in an apparent position of power or authority over a minor" for purposes of subdivision (a)(4) of this section. *Mabry v. State*, 2020 Ark. 72, 594 S.W.3d 39 (2020).

Evidence was sufficient to convict defendant of rape because the youngest daughter, who was 12 years old at the time of the trial, testified that defendant put his private part into her front private part; the eldest daughter testified that defendant began having sexual relations with her when she was 11 or 12 years old, and that he put his male part in her bottom and front multiple times; and the middle daughter testified that she was less than 14 years old when the incidents occurred. *Dominguez v. State*, 2020 Ark. 286 (2020).

Substantial evidence supported the jury verdict on a rape charge where a reasonable jury could have found from the victim's testimony, the evidence from the uncontroverted location where the alleged rape occurred, and the medical expert testimony that defendant penetrated the victim's vagina with either his penis or a sex toy when she was less than 14 years old for his own sexual gratification. *McKee v. State*, 2020 Ark. 327, 608 S.W.3d 584 (2020).

Substantial evidence supported the jury's conclusion that defendant committed rape where the child victim's testimony of hand, mouth, and penis contact established the necessary degree of penetration. *Caple v. State*, 2020 Ark. 340, 609 S.W.3d 630 (2020).

Evidence was sufficient to convict defendant of three counts of rape and three counts of sexual assault in the second degree because the victim testified that she viewed defendant like a father and that he would take care of her while her mother was at work; she testified in detail about numerous sexual encounters with defendant that involved descriptions of both deviate sexual activity and sexual contact; while there were no independent eyewitnesses and no physical evidence, the uncorroborated testimony of a rape victim is sufficient to support a conviction of rape; and the victim's testimony alone, describing the sexual contact, was enough for a sexual assault conviction. *Warren v. State*, 2020 Ark. App. 263, 600 S.W.3d 123 (2020).

Forcible Compulsion or Consent.

In a rape case, the victim's testimony was sufficient to establish the element of forcible compulsion, as she testified that, after she had made it clear to defendant that she did not want to have sex with him, he got on top of her and penetrated her vagina with his penis, and while defendant was in the process of penetration, the victim was crying, saying no, and trying to squeeze her thighs together so he could not penetrate her. *Holland v. State*, 2020 Ark. App. 434 (2020).

Lesser-Included Offenses.

Trial court did not abuse its discretion in refusing defendant's proffered jury in-

struction because first-degree sexual assault under § 5-14-124(a)(1)(C) is not a lesser-included offense of guardian rape under subdivision (a)(4)(A)(i) of this section, as first-degree sexual assault contains an additional element that guardian rape does not—proof that the minor is not the actor's spouse; and even if first-degree sexual assault were a lesser-included offense, there would be no rational basis on which to allow the jury instruction because defendant claimed that he was innocent of the allegations. *Matlock v. State*, 2019 Ark. App. 470, 588 S.W.3d 152 (2019).

5-14-124. Sexual assault in the first degree.**CASE NOTES****ANALYSIS**

Evidence.

Lesser-Included Offense.

Evidence.

Sufficient evidence supported defendant's first-degree sexual assault conviction under subdivision (a)(1)(D) of this section because a jury could use common sense to find that defendant, as the sole adult present, was in a position of authority over a 15-year-old victim visiting defendant's home, and the jury was free to reject the victim's testimony that defendant was not his babysitter. *Scaggs v. State*, 2020 Ark. App. 142, 596 S.W.3d 562 (2020).

Lesser-Included Offense.

Trial court did not abuse its discretion in refusing defendant's proffered jury instruction because first-degree sexual assault under subdivision (a)(1)(C) of this section is not a lesser-included offense of guardian rape under § 5-14-103(a)(4)(A)(i), as first-degree sexual assault contains an additional element that guardian rape does not—proof that the minor is not the actor's spouse; and even if first-degree sexual assault were a lesser-included offense, there would be no rational basis on which to allow the jury instruction because defendant claimed that he was innocent of the allegations. *Matlock v. State*, 2019 Ark. App. 470, 588 S.W.3d 152 (2019).

5-14-125. Sexual assault in the second degree.**CASE NOTES****ANALYSIS**

Directed Verdict.

Evidence.

—Admissibility.

—Sufficiency.

Ineffective Assistance.

Directed Verdict.

Defendant was charged with second-degree sexual assault but convicted of the lesser-included offense of attempted sec-

ond-degree sexual assault and his sufficiency argument was not preserved for review; defendant's directed-verdict motion, which the trial court denied, pertained to the completed offense of second-degree sexual assault, and not its attempt, and to the extent the "mens rea" argument was even preserved, the jury could assume that defendant's purposeful acts of touching the 16-year-old victim's vagina and attempting to lift her shirt, combined with the questions he was ask-

ing her, were attempts to have sexual contact with her for his sexual gratification. *Perea v. State*, 2019 Ark. App. 426, 586 S.W.3d 690 (2019).

Evidence.

—Admissibility.

Even though the trial court violated defendant's right to confrontation under the Sixth Amendment by allowing a substitute analyst to testify regarding the results of a DNA test performed by another analyst, the error was harmless beyond a reasonable doubt; the victim's vivid description of being raped repeatedly and painfully by defendant constituted sufficient evidence to sustain his convictions of rape and second-degree sexual assault. *Alejandro-Alvarez v. State*, 2019 Ark. App. 450, 587 S.W.3d 269 (2019).

In a case in which defendant was convicted of four counts of second-degree sexual assault, the circuit court did not abuse its discretion in admitting a witness's testimony. The witness's statement that she saw defendant and the victim doing chores together at the apartment complex defendant lived in and that she saw defendant kissing and massaging the victim and putting his hands up the victim's shirt was relevant evidence of defendant's plan to use his position of authority to gain access to children and touch them for his sexual gratification. *Watkins v. State*, 2020 Ark. App. 506, 611 S.W.3d 245 (2020).

—Sufficiency.

Substantial evidence supported defendant's conviction for second-degree sexual assault under subdivision (a)(3) of this section, where he acknowledged that he touched the 12-year-old victim's breast, the jury was not required to believe his stated intent, but was free to look at all the evidence, which included testimony that he continued to touch the victim's breast after she told him to stop, that he told her not to tell anyone what had happened, and that he initially minimized the act but confessed when confronted by the

victim's mother. *Barfield v. State*, 2019 Ark. App. 501, 588 S.W.3d 412 (2019).

Evidence was sufficient to convict defendant of three counts of rape and three counts of sexual assault in the second degree because the victim testified that she viewed defendant like a father and that he would take care of her while her mother was at work; she testified in detail about numerous sexual encounters with defendant that involved descriptions of both deviate sexual activity and sexual contact; while there were no independent eyewitnesses and no physical evidence, the uncorroborated testimony of a rape victim is sufficient to support a conviction of rape; and the victim's testimony alone, describing the sexual contact, was enough for a sexual assault conviction. *Warren v. State*, 2020 Ark. App. 263, 600 S.W.3d 123 (2020).

In a second-degree sexual assault case, the trial court did not err in denying defendant's motion for directed verdict, in which defendant alleged that the State failed to provide sufficient evidence that his contact with the victim was for the purpose of sexual gratification, because the victim testified that defendant touched her on her "wrong spot" and indicated on a picture of a girl that the "wrong spot" meant genitalia; she testified that he touched her with his genitalia, and he placed his genitalia on her nose; and it was plausible that defendant touched the victim's genitalia and placed his genitalia on her nose in the pursuit of sexual gratification. *Brehm v. State*, 2020 Ark. App. 442, 608 S.W.3d 166 (2020).

Evidence was sufficient to convict defendant of second-degree sexual assault because, in a prosecution for second-degree sexual assault, the victim's uncorroborated testimony constitutes substantial evidence to affirm the conviction; the desire for sexual gratification only needed to be a plausible reason for the act in order to sustain the conviction; and it was plausible that the desire for sexual gratification was a reason for defendant's repeated sexual contact with a 12-year-old girl. *Ford v. State*, 2020 Ark. App. 526 (2020).

Ineffective Assistance.

Trial court did not abuse its discretion in denying postconviction relief because trial counsel was not ineffective for failing to move for dismissal of the charge of second-degree sexual assault on double

jeopardy grounds, as the State presented evidence of separate impulses comprising separate acts conforming with the definitions of rape and second-degree sexual assault. *Sorum v. State*, 2019 Ark. App. 354, 582 S.W.3d 18 (2019).

CHAPTER 16
VOYEURISM OFFENSES

5-16-101. Crime of video voyeurism.

CASE NOTES

Evidence Sufficient.

Evidence was sufficient to support the video voyeurism conviction where the victims, defendant's adopted teenage daughters, had not consented to defendant's actions and clearly had a reasonable expectation that defendant would not view, film, or photograph them behind their closed bedroom and bathroom doors in the manner he did. *Devries v. State*, 2019 Ark. App. 478, 588 S.W.3d 139 (2019).

Evidence was sufficient to convict defendant of video voyeurism because he used a

camera for the purpose of secretly observing or videotaping the victims; and, although defendant argued that he could not be guilty of the crime because the camera was discovered and reported to police before he was able to retrieve the SD card and view the images, the statutory provision addresses consent, not whether defendant is ultimately successful in observing the images. *Powell v. State*, 2020 Ark. App. 371, 605 S.W.3d 532 (2020).

***SUBTITLE 3. OFFENSES INVOLVING FAMILIES,
DEPENDENTS, ETC.***

CHAPTER 26
OFFENSES INVOLVING THE FAMILY

SUBCHAPTER 3 — DOMESTIC BATTERING AND ASSAULT

5-26-304. Domestic battering in the second degree.

CASE NOTES

Evidence.

Evidence was sufficient to convict defendant of domestic battery in the second degree as he knowingly caused his 64-year-old mother's physical injuries be-

cause the mother suffered a contusion on her foot and an abrasion or cut on her left arm; she told a doctor that defendant slammed a door on her foot; the officers were at the mother's home in response to

her domestic-disturbance complaint; when the officers arrived and found the mother sitting on the front porch, she appeared disheveled, her left leg was swollen, and blood was running down her left arm; and she told an officer that she

and defendant had been fighting, and that she thought she injured her elbow during the fight with defendant. *Benton v. State*, 2020 Ark. App. 223, 599 S.W.3d 353 (2020).

5-26-306. Aggravated assault on a family or household member.

CASE NOTES

ANALYSIS

Defense or Justification.
Evidence.

Defense or Justification.

In a bench trial resulting in defendant's convictions for aggravated assault on a family member and aggravated assault, the circuit court erred as a matter of law in refusing to consider the defense of justification by ruling that defendant could not present the inconsistent defenses of a general denial and justification; where there is evidence that would support a finding of self-defense, case law has held that a jury instruction is appropriate notwithstanding defendant's testimony that he did not commit the crime. Thus, the circuit court committed an error of law in ruling that defendant was required to choose between the defenses of general denial and justification. *Gray v. State*,

2019 Ark. App. 543, 590 S.W.3d 177 (2019).

Evidence.

Substantial evidence supported defendant's conviction in a bench trial of aggravated assault on a family or household member because defendant repeatedly punched the victim, his girlfriend, in the head and face while brandishing an open pocketknife, which could certainly create a substantial danger of death or serious physical injury; and the victim sustained a cut on her ear as defendant had the knife in his hand while he was punching her. *Williams v. State*, 2019 Ark. App. 518, 588 S.W.3d 833 (2019).

Substantial evidence supported the aggravated assault conviction under this section given the victim's testimony that defendant struck her with his hands, put a gun in her mouth, and held a knife to her throat. *Williams v. State*, 2020 Ark. App. 560 (2020).

SUBCHAPTER 4 — NONSUPPORT

5-26-401. Nonsupport.

CASE NOTES

Preservation for Review.

On appeal, defendant for the first time specifically argued that the State failed to prove in his trial for nonsupport that he was \$25,000 or more behind on his child support obligations. This challenge to the sufficiency of the evidence was not pre-

served for appeal because the directed verdict motion made below did not specifically allege that the State's proof was insufficient as to the amount of unpaid child support. *Turley v. State*, 2020 Ark. App. 118 (2020).

CHAPTER 27

OFFENSES AGAINST CHILDREN OR INCOMPETENTS

SUBCHAPTER 2 — OFFENSES GENERALLY

5-27-205. Endangering the welfare of a minor in the first degree.

CASE NOTES

Illustrative Cases.

Substantial evidence supported the first-degree endangering the welfare of a minor conviction where the treating emergency room pediatrician testified that the failure to seek immediate medical care for the child exacerbated his injuries, so de-

fendant's conduct not only placed the child at a substantial risk but also caused significant further injury resulting in permanent brain damage. *Kirby-Snow v. State*, 2020 Ark. App. 474, 609 S.W.3d 686 (2020).

5-27-221. Permitting abuse of a minor.

CASE NOTES

Evidence.

Substantial evidence supported defendant's conviction for permitting abuse of a minor where the child was a normal and healthy baby with only a mild case of jaundice, as few as eight days later he appeared to a family friend to be having a seizure, the mother brushed the friend's

comments off as normal newborn behavior, and as an experienced mother of three other children, she should have known the difference between normal and abnormal newborn behavior. *Kirby-Snow v. State*, 2020 Ark. App. 474, 609 S.W.3d 686 (2020).

SUBCHAPTER 3 — ARKANSAS PROTECTION OF CHILDREN AGAINST EXPLOITATION ACT OF 1979

5-27-306. Internet stalking of a child.

CASE NOTES

Evidence.

Circuit court erred in denying defendant's directed verdict motion on the charge of internet stalking of a child; while the text messages between defendant and the victim showed that they

discussed meeting for sexual activity, they did not demonstrate that defendant made a determined attempt to plan to meet the victim. *Taliaferro v. State*, 2020 Ark. App. 68, 597 S.W.3d 58 (2020).

SUBCHAPTER 6 — COMPUTER CRIMES AGAINST MINORS**5-27-602. Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child.****CASE NOTES****ANALYSIS**

Evidence Sufficient.
Sexually Explicit Conduct.

Evidence Sufficient.

Sufficient evidence supported defendant's child pornography convictions because substantial evidence supported the finding that defendant possessed prohibited material, as file creations and deletions were associated with defendant's user account, sexually explicit material involving children was found on defendant's computer, and files on defendant's computer were not created in a vacuum but instead were the result of his actions of viewing, playing, downloading, or searching for sexually explicit images involving children. *Groomes v. State*, 2019 Ark. App. 408, 586 S.W.3d 196 (2019).

Circuit court properly denied defendant's motion for a directed verdict on 104 counts of possession of child pornography, because the State presented sufficient evidence to show that defendant exercised dominion and control over the subject laptop, where his username was used to download the images, and he told a state trooper that he had exclusive access to the computer when the child-pornographic images were uploaded to a chatroom. *Taliaferro v. State*, 2020 Ark. App. 68, 597 S.W.3d 58 (2020).

Sexually Explicit Conduct.

In a child pornography case, sufficient evidence supported the jury's verdict that five images that defendant possessed of nude children depicted sexually explicit conduct. *Groomes v. State*, 2019 Ark. App. 408, 586 S.W.3d 196 (2019).

5-27-605. Computer exploitation of a child.**CASE NOTES****Ineffective Assistance of Counsel.**

Because the State presented sufficient evidence to support petitioner's conviction for computer exploitation of a child, trial counsel was not ineffective for failing to preserve the sufficiency-of-the-evidence issue for appeal; petitioner testified that he prodded the victim with the broomstick around her thigh area, and it was the duty of the jury to view the video and determine if actual or simulated penetration of the victim's vagina or anus occurred. *Sorum v. State*, 2019 Ark. App. 354, 582 S.W.3d 18 (2019).

Trial court did not abuse its discretion in denying postconviction relief because trial counsel was not ineffective for failing to move for a directed verdict on the offense of computer exploitation of a child on the correct grounds; the State presented evidence that petitioner had reason to know that a cell phone could have been recording video of his actions against the victim. *Sorum v. State*, 2019 Ark. App. 354, 582 S.W.3d 18 (2019).

SUBTITLE 4. OFFENSES AGAINST PROPERTY

CHAPTER 36

THEFT

SUBCHAPTER 1 — GENERAL PROVISIONS

5-36-101. Definitions.

CASE NOTES

Value.

Circuit court did not err in finding that the State had met its burden of proving the vehicle had a fair market value of more than \$1,000 when defendant stole it; the owner testified that she had paid \$3,900 for the vehicle approximately one year before it was stolen and that she would have been willing to sell it at the time of the theft for \$3,000, and her testi-

mony in conjunction with an officer's testimony describing the high-speed chase and a video, which captured the attempted traffic stop and the ensuing pursuit, allowed the circuit court to observe the stolen vehicle and make a determination that it met the minimum statutory value under § 5-36-106. *Beene v. State*, 2019 Ark. App. 493, 588 S.W.3d 748 (2019).

5-36-102. Consolidation of offenses — Theft by deception presumption at auction of livestock — Amount of theft.

CASE NOTES

Aggregation of Amount Stolen.

Defendant was charged with one crime, theft by receiving under § 5-36-106, which is a continuing offense, and it was not erroneous to aggregate the amount stolen from her employer over a period of time under subdivision (d)(2) of this section and classify the crime as a Class B felony, even though each individual act of

acquiring possession did not add up to over \$25,000. The last time defendant stole money from her employer was in February 2014, which was well within the time limit for statute of limitations calculations for a Class B felony under § 5-1-109. *Clements v. State*, 2020 Ark. App. 175, 594 S.W.3d 922 (2020).

5-36-103. Theft of property.

CASE NOTES

ANALYSIS

Accomplices.

Evidence.

—Sufficiency.

Statute of Limitations.

Accomplices.

Evidence was sufficient to support a guilty finding on the theft of a firearm charge given the juvenile's possession of the hoverboard that was stolen at the

same time, and he was riding the hoverboard alongside another juvenile who was carrying the stolen firearms. *B.T. v. State*, 2019 Ark. App. 471, 588 S.W.3d 387 (2019).

Evidence.

—Sufficiency.

Circuit court did not err in denying defendant's motions for directed verdict on two theft counts and five other counts even though all the evidence was circum-

stantial; given the entirety of the circumstantial evidence, the jury could conclude without resorting to speculation or conjecture that defendant committed the offenses. Defendant had bypassed a locked gate to enter the victim's property and fled when confronted by the police, his explanation as to why he was on the property was improbable, and he had a backpack and ratchet in his hand that looked like the victim's property. *Cobb v. State*, 2019 Ark. App. 434, 585 S.W.3d 196 (2019).

Evidence was sufficient to support a guilty finding on the theft-of-property charge given the juvenile's admission that he possessed the hoverboard (although he claimed he only borrowed it). *B.T. v. State*, 2019 Ark. App. 471, 588 S.W.3d 387 (2019).

Defendant's convictions for aggravated robbery, theft, and possession of a firearm by certain persons were supported by substantial evidence; although defendant contended that he and the second victim struggled for control of the gun, not the money, evidence was presented that even though defendant had already obtained the money from one victim, he dropped the bag of money during his struggle with a second victim, defendant pushed the second victim multiple times to get him away from the bag and then picked it up and left the store as he pointed the gun at the second victim, thereby exercising unauthorized control over another's property with the purpose of depriving the owner of the property. *McCray v. State*, 2020 Ark. 172, 598 S.W.3d 509 (2020).

Trial court properly denied defendant's motion for a directed verdict because sufficient evidence supported defendant's convictions for first-degree murder, aggravated robbery, and theft of property where defendant and his accomplice manifested an extreme indifference to the value of human life when they both pointed the victim's guns at the victim, the accomplice shot the victim, and defendant and the accomplice fled with the victim's guns and

marijuana. *Terry v. State*, 2020 Ark. 202, 600 S.W.3d 575 (2020).

Evidence was sufficient to convict defendant of theft of property because she placed two soundbars in her cart in such a manner that it appeared there was only one box; she scanned only the lower priced item; after being questioned, she left the store; she took affirmative steps to hide her license plate before speeding away; and she continued to flee despite damage to her vehicle and despite being followed by a marked police car with its lights activated. *Overton v. State*, 2020 Ark. App. 259, 600 S.W.3d 636 (2020).

Circuit court properly denied defendant's motions for a directed verdict because sufficient evidence supported his convictions for robbery and theft of property where defendant picked up a phone charger and concealed it behind his cell phone as he continued to shop throughout a grocery store, he put the charger in his female companion's purse without first paying for it, and when confronted by one of the store's loss-prevention officers, he handed over the charger and attempted to flee, resulting in a struggle with two of the loss-prevention officers. *Hester v. State*, 2020 Ark. App. 571 (2020).

Statute of Limitations.

In sentencing defendant after he pleaded guilty to felony theft of property for embezzling money from his employer, the trial court did not err in applying § 5-1-109(c) and in finding that none of the restitution was time-barred where the theft was not discovered until several months after defendant's termination from employment due to his successful concealment of the fraudulent activity. Thus, the one-year period in § 5-1-109(c)(1) did not begin until the offense was actually discovered in August 2018. Because the prosecution was commenced on January 11, 2019, the statute of limitations did not run as to any of the restitution. *Bushnell v. State*, 2020 Ark. App. 566 (2020).

5-36-106. Theft by receiving.**CASE NOTES****ANALYSIS**

Aggregation of Amount Stolen.
Evidence.
Value.

Aggregation of Amount Stolen.

Defendant was charged with one crime, theft by receiving, which is a continuing offense, and it was not erroneous to aggregate the amount stolen from her employer over a period of time and classify the crime as a Class B felony under § 5-36-102(d)(2), even though each individual act of acquiring possession did not add up to over \$25,000. The last time defendant stole money from her employer was in February 2014, which was well within the time limit for statute of limitations calculations for a Class B felony under § 5-1-109. *Clements v. State*, 2020 Ark. App. 175, 594 S.W.3d 922 (2020).

Evidence.

Only connection between defendant and a stolen vehicle was that it was located on the driveway of her residence. Thus, the

appellate court could not conclude that substantial evidence supported a finding that defendant had actual or constructive possession of the vehicle without resorting to speculation or conjecture. *Davis v. State*, 2020 Ark. App. 411, 606 S.W.3d 83 (2020).

Value.

Circuit court did not err in finding that the State had met its burden of proving the vehicle had a fair market value of more than \$1,000 when defendant stole it; the owner testified that she had paid \$3,900 for the vehicle approximately one year before it was stolen and that she would have been willing to sell it at the time of the theft for \$3,000, and her testimony in conjunction with an officer's testimony describing the high-speed chase and a video, which captured the attempted traffic stop and the ensuing pursuit, allowed the circuit court to observe the stolen vehicle and make a determination that it met the minimum statutory value. *Beene v. State*, 2019 Ark. App. 493, 588 S.W.3d 748 (2019).

CHAPTER 38**DAMAGE OR DESTRUCTION OF PROPERTY****SUBCHAPTER 2 — OFFENSES GENERALLY****5-38-203. Criminal mischief in the first degree.****CASE NOTES****ANALYSIS**

Evidence.
—Admission.

Evidence.

Circuit court did not err in denying defendant's motions for directed verdict on a count of first-degree criminal mischief and six other counts even though all the evidence was circumstantial; given the entirety of the circumstantial evidence, the jury could conclude without resorting to speculation or conjecture that

defendant committed the offenses. Defendant had bypassed a locked gate to enter the victim's property and fled when confronted by the police, his explanation as to why he was on the property was improbable, and he had a backpack and ratchet in his hand that looked like the victim's property. *Cobb v. State*, 2019 Ark. App. 434, 585 S.W.3d 196 (2019).

Substantial evidence supported defendant's first-degree criminal mischief conviction where the testimony established that he was the only inmate in the pod, a dismantled speaker and various tools

found in that pod had been used to create a hole through the ceiling of the cell and the roof of the building, and an invoice showed the cost of repair. *Badger v. State*, 2019 Ark. App. 490, 588 S.W.3d 779 (2019).

Evidence was sufficient to support the trial court's finding that defendant possessed the requisite intent for first-degree criminal mischief because the evidence, when viewed in the light most favorable to the State, showed that defendant arrived at the home of a sheriff's deputy before daybreak, with the music blaring on her car radio, while high on methamphetamine; defendant knocked a hole in the vinyl siding of the deputy's home with a flashlight and damaged the door by hitting and kicking it, and continued this behavior even after the deputy threatened to shoot her if she did not stop. *Sharp v. State*, 2019 Ark. App. 506, 588 S.W.3d 770 (2019).

Trial court, acting as the factfinder, chose to credit the testimony of a sheriff's deputy that defendant was high on methamphetamine at the time of the criminal mischief offense over the opinion of a doctor, who performed psychological evaluations of defendant, that defendant was suffering from a mental disease, schizoaffective disorder. The court was entitled to believe the deputy's testimony over the doctor's testimony and to decide that defendant did not prove the defense of mental disease by a preponderance of

the evidence. *Sharp v. State*, 2019 Ark. App. 506, 588 S.W.3d 770 (2019).

Evidence was sufficient to sustain defendant's first-degree criminal mischief conviction, where defendant had engaged in a high-speed chase, he had rammed his car into a trooper's car when officers attempted to slow him down, he continued to flee on foot after the car was disabled, and the trooper testified that it cost over \$2,000 to repair his damaged car. *Hooten v. State*, 2019 Ark. App. 519, 588 S.W.3d 829 (2019).

—Admission.

Circuit court properly admitted hearsay, in the form of an invoice, to prove the amount of actual damages under the criminal mischief statute; while there was no testimony regarding how the invoice was prepared, it was introduced under Ark. R. Evid. 803(6), the business-records hearsay exception, through a qualified and knowledgeable witness who testified that she was authorized by the hospital administrator to submit the invoice, the invoice represented the actual replacement cost paid by the hospital to replace the tele-medicine device and glass cabinet that defendant damaged, the witness had knowledge of the process involved in paying for the equipment, and the invoice was created about two months after defendant destroyed the equipment. *Patton v. State*, 2019 Ark. App. 440, 586 S.W.3d 708 (2019).

5-38-205. Impairing the operation of a vital public facility.

CASE NOTES

Evidence Sufficient.

Circuit court did not err in denying defendant's motion for directed verdict on the charge of impairing the operation of a vital public facility because defendant's altercation with a jailer led to the only two jailers on duty, an officer, and the dispatcher focusing all attention on defen-

dant, and they were unable to monitor the jail and perform their duties; further, while the jailer was at the hospital being examined after the altercation, he was unable to perform his duties as a jailer. *Chambers v. State*, 2020 Ark. App. 54, 595 S.W.3d 371 (2020).

SUBCHAPTER 3 — ARSON AND OTHER BURNING

5-38-301. Arson.

CASE NOTES

Evidence.

Circuit court properly denied defendant's motion for directed verdict after a jury convicted him of arson and theft of property because the circumstantial evidence was compelling — defendant was deliberately disinherited by his uncle; defendant was observed riding a four-wheeler in the vicinity of the house hours before the fire started; a four-wheeler was

seen driving down the street around the time the fire started; the uncle's cremated remains were removed from the house before the fire; and photos taken from the uncle's game camera, found in defendant's residence, placed defendant inside the house holding a cigarette, a metal can or glass container, and a rag. *Milner v. State*, 2020 Ark. App. 546 (2020).

CHAPTER 39

BURGLARY, TRESPASS, AND OTHER INTRUSIONS

SUBCHAPTER 1 — GENERAL PROVISIONS

5-39-101. Definitions.

CASE NOTES

Enter or Remain Unlawfully.

Evidence was sufficient to convict defendant of residential burglary as defendant entered or remained unlawfully in the house with the purpose to commit a third-degree battery because the defendant's former spouse testified that, before defendant entered the house, she had asked him to leave but that he shoved her out of

the way and entered the house uninvited before immediately attacking the battery victim; and she further testified that, during defendant's attack on the battery victim inside the house, she again told defendant to leave but he refused. *Williams v. State*, 2019 Ark. App. 602, 591 S.W.3d 376 (2019).

SUBCHAPTER 2 — OFFENSES GENERALLY

5-39-201. Residential burglary — Commercial burglary.

CASE NOTES

ANALYSIS

Harmless Error.

Sufficient Evidence.

Harmless Error.

Although the search warrant was invalid with respect to the cigarettes, failure to suppress the cigarettes constituted

harmless error. Excluding the cigarettes, the jury nevertheless had overwhelming evidence of defendant's commercial burglary and aggravated robbery offenses; in part, defendant was identified from surveillance video and a search of his vehicle revealed ammunition of the type used by the gun in the robberies, as well as a bandana that contained his DNA. *Jemison v. State*, 2019 Ark. App. 475, 588 S.W.3d 359 (2019).

Sufficient Evidence.

Circuit court did not err in denying defendant's motions for directed verdict on a residential burglary count and six other counts even though all the evidence was circumstantial; given the entirety of the circumstantial evidence, the jury could conclude without resorting to speculation or conjecture that defendant committed the offenses. Defendant had bypassed a locked gate to enter the victim's property and fled when confronted by the police, his explanation as to why he was on the property was improbable, and he had a backpack and ratchet in his hand that looked like the victim's property. *Cobb v. State*, 2019 Ark. App. 434, 585 S.W.3d 196 (2019).

Evidence supported a juvenile's resi-

dential burglary conviction where the victim testified that a hoverboard was stolen from his home and he had not given anyone permission to be inside his home on the day of the burglary, and the juvenile admitted possession (but claimed he borrowed the hoverboard). *B.T. v. State*, 2019 Ark. App. 471, 588 S.W.3d 387 (2019).

Evidence was sufficient to convict defendant of residential burglary as defendant entered or remained unlawfully in the house with the purpose to commit a third-degree battery because defendant's former spouse testified that, before defendant entered the house, she had asked him to leave but that he shoved her out of the way and entered the house uninvited before immediately attacking the battery victim; and the former spouse further testified that, during defendant's attack on the battery victim inside the house, she again told defendant to leave but he refused. *Williams v. State*, 2019 Ark. App. 602, 591 S.W.3d 376 (2019).

Substantial evidence supported the residential burglary conviction given testimony that defendant had been told not to return to the victim's home, and defendant admitted that he had not been invited back. *Williams v. State*, 2020 Ark. App. 560 (2020).

5-39-202. Breaking or entering.

CASE NOTES

Evidence.

Circuit court did not err in denying defendant's motions for directed verdict on two breaking or entering counts and five other counts even though all the evidence was circumstantial; given the entirety of the circumstantial evidence, the jury could conclude without resorting to speculation or conjecture that defendant

committed the offenses. Defendant had bypassed a locked gate to enter the victim's property and fled when confronted by the police, his explanation as to why he was on the property was improbable, and he had a backpack and ratchet in his hand that looked like the victim's property. *Cobb v. State*, 2019 Ark. App. 434, 585 S.W.3d 196 (2019).

SUBTITLE 5. OFFENSES AGAINST THE ADMINISTRATION OF GOVERNMENT

CHAPTER 53

OFFENSES RELATING TO JUDICIAL AND OTHER OFFICIAL PROCEEDINGS

SUBCHAPTER 1 — GENERAL PROVISIONS

5-53-111. Tampering with physical evidence.

CASE NOTES

Evidence.

Defendant's directed-verdict motion on the tampering with physical evidence charge was inadequate to preserve his challenge to the sufficiency of the evidence as the motion failed to adequately specify any deficiencies in the State's proof. Even had the motion been specific enough, there was sufficient evidence presented to support the conviction because defendant threw the gun in the river after shooting the victim; while defendant claimed that the discharge was accidental and that the disposal was not to impede any investigation or prosecution, the jury was not required to believe his version of events. *Webb v. State*, 2019 Ark. App. 436, 587 S.W.3d 252 (2019).

Evidence was sufficient to convict defendant of aggravated robbery and accomplice to tampering with physical evidence because the victim met with defendant, went with defendant to an ATM to withdraw \$80 in cash shortly before the altercation between them, was beaten unconscious by defendant, and was found within a few hours severely injured, unconscious, and alone in the parking lot with no money or identification on him; defendant admitted to beating the victim; and defendant admitted knowledge of his girlfriend's having thrown his shoes that had the victim's blood on them in a dumpster. *Green v. State*, 2020 Ark. App. 320, 601 S.W.3d 463 (2020).

5-53-134. Violation of an order of protection.

CASE NOTES

Evidence Sufficient.

Evidence was sufficient to support defendant's conviction of violation of a protection order based on his "tagging" his children in several Facebook posts; the evidence showed that defendant was an experienced social media user, defendant's daughter testified that defendant had to take affirmative steps in order to

tag her and her brother in his posts, the daughter and a detective testified that it would be visibly apparent that defendant was tagging his children in the social media posts, and the detective opined that defendant's actions were an intentional form of communication and not an accident or a mistake. *Adams v. State*, 2020 Ark. App. 107, 594 S.W.3d 884 (2020).

CHAPTER 54

OBSTRUCTING GOVERNMENTAL OPERATIONS

SUBCHAPTER 1 — GENERAL PROVISIONS

5-54-103. Resisting arrest — Refusal to submit to arrest.

CASE NOTES

Evidence.

Evidence was sufficient to convict defendant of resisting arrest, where he refused to submit and engaged in an extended struggle with the trooper who arrested

him, and the struggle was apparently physical enough to break the trooper's microphone clip off his utility belt. *Hooten v. State*, 2019 Ark. App. 519, 588 S.W.3d 829 (2019).

5-54-112. Third degree escape.

CASE NOTES

Evidence.

Defendant was properly convicted of third-degree escape because at the time of his transport to a medical center for treatment, defendant was already under arrest; thus, defendant's escape attempt while a deputy was in the process of

restraining him for transportation back to jail met the definition of "custody" under § 5-54-101. Because the deputy worked as a sheriff at the county sheriff's office at the time of defendant's escape, the felony charge was appropriate. *Renninger v. State*, 2021 Ark. App. 52 (2021).

5-54-120. Failure to appear.

CASE NOTES

Evidence.

Jury had substantial evidence to support defendant's conviction on two counts of failure to appear because defendant admitted and the State introduced documentary proof that defendant signed circuit court orders directing defendant to appear in court on separate dates and it

was undisputed that he failed to appear for the court dates. The jury had the opportunity to weigh defendant's testimony that he did not appear for court as ordered because he was not given copies of the orders and forgot the dates. *Hyatt v. State*, 2020 Ark. App. 390, 607 S.W.3d 180 (2020).

5-54-122. Filing false report with law enforcement agency.

CASE NOTES

Evidence.

Court of Appeals affirmed defendant's conviction for filing a false police report because the circuit court found that defendant knowingly filed a false report on the basis of its credibility determination, and the Court of Appeals was not at liberty to disturb the circuit court's credibility de-

terminations on appeal; the circuit court listened to defendant's recording and a state senator's recording, watched and listened to the recording from the police department, and observed the testimony of the witnesses. *Ferry v. State*, 2021 Ark. App. 34 (2021).

5-54-125. Fleeing.**CASE NOTES****Evidence.**

Evidence was sufficient to convict defendant of felony vehicular fleeing as she drove the vehicle in a manner that manifested extreme indifference to the value of human life because she fled in a vehicle, drove in excess of the speed limit, and ran

two separate four-way stops while being pursued by a marked patrol car running both lights and a siren; and she narrowly missed other vehicles, including a van with children inside. *Overton v. State*, 2020 Ark. App. 259, 600 S.W.3d 636 (2020).

CHAPTER 55**FRAUD AGAINST THE GOVERNMENT****SUBCHAPTER 6 — ELECTION, PETITION, AND BALLOT FRAUD**

Publisher's Notes. This Effective Dates note is being set out to reflect an update to the 2019 supplement pamphlet.

Effective Dates. Acts 2019, No. 376, § 14: Mar. 8, 2019. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act amends the process for circulating initiative petitions and referendum petitions; and that the provisions of this act should become effective immediately so that its provisions apply to all petitions circulated after the passage of the act to avoid confusion in petition circulation. Therefore, an emergency is de-

clared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto." The emergency clause for Acts 2019, No. 376 was held to be defective in *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403.

5-55-601. Petition fraud.**CASE NOTES****Effective Date of 2019 Amendment.**

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was "to avoid confusion in petition circulation"; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Sur-*

gery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

***SUBTITLE 6. OFFENSES AGAINST PUBLIC HEALTH,
SAFETY, OR WELFARE***

CHAPTER 64

CONTROLLED SUBSTANCES

**SUBCHAPTER 4 — UNIFORM CONTROLLED SUBSTANCES ACT — PROHIBITIONS
AND PENALTIES**

**5-64-402. Controlled substances — Offenses relating to records,
maintaining premises, etc.**

CASE NOTES

Evidence.

Evidence was sufficient to support defendant's conviction for maintaining a premises for drug activity because the State did not have to prove that drug sales

occurred as an element of the crime and the fact that the dwelling was used for consuming or using drugs was enough. *Garner v. State*, 2020 Ark. App. 101, 594 S.W.3d 145 (2020).

5-64-419. Possession of a controlled substance.

CASE NOTES

ANALYSIS

Evidence Sufficient.

—Identity of Controlled Substance.

Possession.

Usable Amounts.

Evidence Sufficient.

Substantial evidence supported defendant's convictions for possession of methamphetamine and drug paraphernalia because the officer testified that he observed aluminum foil fall out of defendant's right pants leg at the detention center, he also discovered a piece of nitrile glove that contained a small baggie of white crystalline substance inside the aluminum foil, defendant later admitted that it contained methamphetamine, and the substance tested positive for methamphetamine. *Haney v. State*, 2020 Ark. App. 341, 602 S.W.3d 154 (2020).

—Identity of Controlled Substance.

State need not always submit a chemical analysis to prove the identity of a controlled substance, including pills; circumstantial evidence can suffice. Sufficient evidence supported defendant's convictions because a forensic chemist with

the state crime laboratory testified that, in his professional opinion, the drugs found in defendant's mobile home were oxycodone and hydrocodone. The chemist, who relied on a visual identification alone, rather than chemical testing, said that the pills showed no dubious markings that required more testing. *Kellensworth v. State*, 2021 Ark. 5 (2021).

Possession.

Substantial evidence supported defendant's convictions for possession of methamphetamine and possession of paraphernalia because (1) defendant admitted she had smoked methamphetamine that day, (2) defendant owned the house where the methamphetamine was found hidden in a water-heater closet, (3) defendant could not disclaim possession due to being absent when the search warrant was executed, (4) the jury was not required to believe defendant's testimony suggesting that another person had hid the drugs in her residence, and (5) defendant's knowledge of and control over the contraband found in her residence could be inferred from the circumstances. *Knauls v. State*, 2020 Ark. App. 48, 593 S.W.3d 58 (2020).

Circuit court properly convicted defendant, upon a jury verdict, of possession of cocaine in a criminal detention facility because he exercised dominion and control over the lockbox in which the cocaine was found where he was alone and sleeping in his cell when the officers began the search, the cocaine was found in the lockbox belonging to defendant and for which only he had a key, and, even if both defendant and his cellmate had access to the lockbox, there was sufficient evidence to establish defendant's constructive possession based on joint occupancy. *Moten v. State*, 2020 Ark. App. 58, 593 S.W.3d 504 (2020).

Evidence was insufficient to support defendant's conviction of possession of less than two grams of methamphetamine because the State did not present substantial evidence that defendant constructively possessed methamphetamine that was found in a nightstand drawer in a bedroom of a jointly occupied house where the State argued that the presence of the ID of defendant's girlfriend in the room was a sufficient link to defendant. *Garner v. State*, 2020 Ark. App. 101, 594 S.W.3d 145 (2020).

Although the evidence was circumstan-

tial that defendant had constructive possession over the contraband found in her home, her behavior when asking for her medication, description of the bag containing her medication and exactly where it would be located in the house she jointly occupied with her daughter, the existence of multiple bottles of prescription medication with defendant's name being inside the bag with the contraband, and defendant's denial of ownership showed that she exercised care, control, and management over the contraband and that she knew the matter possessed was contraband. *Richard v. State*, 2021 Ark. App. 25 (2021).

Usable Amounts.

Although the methamphetamine was found loaded into syringes, the appellate court had no evidence identifying the dark-red liquid in which the methamphetamine was found and therefore no way to know if the syringes were "usable" and defendant's conviction for possessing less than two grams of methamphetamine had to be reversed. *Kolb v. State*, 2020 Ark. App. 305, 602 S.W.3d 128 (2020), review granted, 2020 Ark. LEXIS 302 (Sept. 24, 2020).

5-64-420. Possession of methamphetamine or cocaine with the purpose to deliver.

CASE NOTES

ANALYSIS

Informants.
Possession.

Informants.

Defendant was not charged with any crimes as a result of the controlled buys, and instead he was charged with possession of methamphetamine with purpose to deliver after execution of the search warrant; the informant was not at the execution of the warrant and only provided information that led to its issuance, and thus defendant was not entitled to the identity of and information about the informant. *Deloney v. State*, 2021 Ark. App. 36 (2021).

Possession.

For purposes of his conviction of possession of methamphetamine with purpose to deliver, there was sufficient evidence to find that defendant was in constructive possession of the methamphetamine in the truck, where defendant drove the truck containing the drugs from a church to a nearby gas station because he and codefendant were spooked by police being in the area and defendant knew where the drugs were and was in proximity to them because he hit part of the truck to show the confidential informant where the drugs were hidden. *Baker v. State*, 2019 Ark. App. 515, 588 S.W.3d 844 (2019).

5-64-432. Possession of a Schedule IV or Schedule V controlled substance with the purpose to deliver.

CASE NOTES

Evidence Sufficient.

Sufficient evidence supported defendant's conviction of possession of a controlled substance with purpose to deliver; the plain language of this section requires only having a "purpose" to deliver, not actual delivery, and the jury could have

inferred that had the price been right, defendant would have sold the pills. Furthermore, purpose to deliver could be shown by statutory factors, including possession of a firearm, which defendant had. *Jimmerson v. State*, 2019 Ark. App. 578, 590 S.W.3d 764 (2019).

5-64-440. Trafficking a controlled substance.

CASE NOTES

Jury Instructions.

Although the trial court erred in giving a nonmodel jury instruction on the methamphetamine trafficking charge because the model instruction on trafficking accu-

rately stated the law, the error was harmless because the erroneous instruction was obviously cured by other instructions. *Harmon v. State*, 2020 Ark. 217, 600 S.W.3d 586 (2020).

5-64-443. Drug paraphernalia.

CASE NOTES

ANALYSIS

Evidence Sufficient.
Possession.

Evidence Sufficient.

Substantial evidence supported defendant's convictions for possession of methamphetamine and drug paraphernalia because the officer testified that he observed aluminum foil fall out of defendant's right pants leg at the detention center, he also discovered a piece of nitrile glove that contained a small baggie of white crystalline substance inside the aluminum foil, defendant later admitted that it contained methamphetamine, and the substance tested positive for methamphetamine. *Haney v. State*, 2020 Ark. App. 341, 602 S.W.3d 154 (2020).

Possession.

Substantial evidence supported defendant's convictions for possession of methamphetamine and possession of paraphernalia because (1) defendant admitted she had smoked methamphetamine that day, (2) defendant owned the house where the methamphetamine was found hidden in a

water-heater closet, (3) defendant could not disclaim possession due to being absent when the search warrant was executed, (4) the jury was not required to believe defendant's testimony suggesting that another person had hid the drugs in her residence, and (5) defendant's knowledge of and control over the contraband found in her residence could be inferred from the circumstances. *Knauls v. State*, 2020 Ark. App. 48, 593 S.W.3d 58 (2020).

Evidence was insufficient to support defendant's conviction of possession of drug paraphernalia because the State did not present substantial evidence that defendant constructively possessed a methamphetamine pipe that was found in a tin inside a kitchen cabinet in a jointly occupied house. Another occupant was the only person present when the search warrant was executed, and he was found with methamphetamine and paraphernalia on his person and admitted using it. The jury would have had to speculate to conclude that the pipe belonged to defendant rather than someone else. *Garner v. State*, 2020 Ark. App. 101, 594 S.W.3d 145 (2020).

Although the evidence was circumstantial that defendant had constructive pos-

session over the contraband found in her home, her behavior when asking for her medication, description of the bag containing her medication and exactly where it would be located in the house she jointly occupied with her daughter, the existence of multiple bottles of prescription medication with defendant's name being inside

the bag with the contraband, and defendant's denial of ownership showed that she exercised care, control, and management over the contraband and that she knew the matter possessed was contraband. *Richard v. State*, 2021 Ark. App. 25 (2021).

CHAPTER 65

DRIVING OR BOATING WHILE INTOXICATED

SUBCHAPTER 1 — GENERAL PROVISIONS

5-65-103. Driving or boating while intoxicated.

CASE NOTES

Mental State.

Although the circuit court in a bench trial incorrectly held that the applicable culpable mental state was strict liability in a DWI case that did not involve alcohol, defendant's conviction was affirmed where the circuit court made an alternative finding under the correct standard that the State had submitted proof sufficient to satisfy reckless conduct under §§ 5-2-203 and 5-2-202; the testimony of the officer, the pharmacist expert, and the defendant provided sufficient evidence to support a finding that defendant acted recklessly in taking prescribed barbiturates (for her migraine) and then operating a motor vehicle. *Cordero v. State*, 2019 Ark. App. 484, 588 S.W.3d 369 (2019).

Reversal of defendant's DWI conviction and remand for the circuit court to consider the evidence under the correct standard was appropriate because the circuit court incorrectly held that the applicable culpable mental state for non-alcohol-related offenses was strict liability and the court also did not make an alternative finding under the correct standard. Therefore, the appellate court could not conclude that the circuit court would have concluded that defendant acted at least recklessly under the evidence. *Rowton v. State*, 2020 Ark. App. 174, 598 S.W.3d 522 (2020).

Cited: *Papageorge v. Tyson Shared Servs.*, 2019 Ark. App. 603, 590 S.W.3d 800 (2019).

5-65-110. Record of violations and court actions — Abstract.

CASE NOTES

Cited: *Clay v. State*, 2019 Ark. App. 356, 584 S.W.3d 270 (2019).

5-65-111. Sentencing — Periods of incarceration — Exception.

CASE NOTES

Prior Convictions.

Overruling defendant's objection to certified copies of the docket sheets showing three prior misdemeanor DWI convictions under Ark. R. Evid. 803(22) was an abuse

of discretion as the convictions were not punishable by more than one year in prison. *Clay v. State*, 2019 Ark. App. 356, 584 S.W.3d 270 (2019).

Circuit court's admission of certified

docket sheets showing three prior misdemeanor-DWI convictions was not an abuse of discretion under Ark. R. Evid. 803(8) as the evidence fell squarely within the public-records exception, and was admissible to prove an element of a subsequently charged crime, i.e., that defendant had been convicted of seven DWIs, not to prove that he actually committed the underlying misdemeanors charged. Thus, any conflict between Ark. R. Evid.

803(22) and 803(8) was resolved. *Clay v. State*, 2019 Ark. App. 356, 584 S.W.3d 270 (2019).

Because defendant, an habitual offender, was sentenced to less than the maximum sentence under either his argued fifth-DWI scenario or for his eighth DWI, defendant had not demonstrated prejudice. *Clay v. State*, 2019 Ark. App. 356, 584 S.W.3d 270 (2019).

SUBCHAPTER 2 — CHEMICAL ANALYSIS OF BODY SUBSTANCES

5-65-208. Motor vehicle and motorboat accidents — Testing required.

CASE NOTES

Suppression Denied.

Defendant driver involved in a 2014 accident that resulted in serious injuries and the death of a child was not entitled to suppression of the blood alcohol test in his criminal trial because the good-faith exception to the exclusionary rule applied under the circumstances presented; defendant was nonresponsive at the scene of the accident and, according to the arresting officer, unconscious, and the officer believed the law required him to obtain a blood draw from both drivers because the accident involved a fatality. *Parks v. State*, 2020 Ark. App. 267, 599 S.W.3d 382 (2020) (decided under prior version of statute).

Circuit court did not err in refusing to suppress defendant's blood test results when defendant contended that the version of this section that was in effect when defendant was subjected to a warrantless blood draw in 2015 was unconstitutional; the circuit court concluded that the state troopers acted in good faith in obtaining the warrantless blood draw, making the exclusionary rule inapplicable and the blood test results admissible. *Brisette v. State*, 2020 Ark. App. 303, 601 S.W.3d 156 (2020).

CHAPTER 71

RIOTS, DISORDERLY CONDUCT, ETC.

SUBCHAPTER 2 — OFFENSES GENERALLY

5-71-213. Loitering.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Amie Alexander & Sarah Giammo, Survey of Legislation 2017: Arkansas General As-

sembly, 40 U. Ark. Little Rock L. Rev. 305 (2017).

CASE NOTES

Constitutionality.

Statewide preliminary injunction was properly granted on a First Amendment challenge to subdivision (a)(3) of this section concerning the offense of loitering because beggars sufficiently alleged an injury-in-fact for standing purposes where there was a credible threat of prosecution;

strict scrutiny applied; and, even if the state's interest in public safety through the prevention of aggressive conduct and traffic hazards was "compelling", the state did not show that the law was narrowly tailored to achieve that interest. *Rodgers v. Bryant*, 942 F.3d 451 (8th Cir. 2019).

CHAPTER 73

WEAPONS

SUBCHAPTER.

3. CONCEALED HANDGUNS.

SUBCHAPTER 1 — POSSESSION AND USE GENERALLY

5-73-101. Definitions.

CASE NOTES

Violent Felony Conviction.

Circuit court properly sentenced defendant as a habitual offender to 12 years' imprisonment for possession of a firearm by certain persons, Class B felony, because defendant's prior federal conviction for aggravated assault qualified as a "prior violent felony conviction" under this section and § 5-73-103; assault with a dan-

gerous weapon in the federal statute, 18 U.S.C. § 113, met the "serious physical force" requirement in subdivision (11)(B) of this section because the threat of bodily impact, restraint, or confinement when committed with a dangerous weapon is a threat of serious force. *Seyller v. State*, 2019 Ark. App. 423, 586 S.W.3d 685 (2019).

5-73-103. Possession of firearms by certain persons.

CASE NOTES

ANALYSIS

Constructive Possession.
Evidence.
Preservation for Review.
Sentencing.

Constructive Possession.

Substantial evidence supported defendant's conviction for felon in possession of a firearm where constructive possession could be implied given that the firearm was under the driver's seat, so it was immediately and exclusively accessible by defendant and subject to his control, and the jury was not required to believe defendant's self-serving testimony that he had

no knowledge that the firearm was in the vehicle, especially given that the evidence showed that the gun case in which the firearm had been kept was open and empty on the passenger's seat; defendant's mother owned the vehicle, his fiancée testified that it was her gun, and defendant was the sole occupant of the vehicle at the time of arrest. *Bens v. State*, 2020 Ark. App. 6, 593 S.W.3d 495 (2020).

Circuit court properly sentenced defendant to a total of 24 years in prison after a jury convicted him of being a felon in possession of a firearm because the gun at issue was found under the passenger seat along with socks and a brush, and the jury was not required to believe defendant's

self-serving testimony that he had no knowledge that the firearm was in the vehicle, and his cursory argument regarding counsel's understanding of the sentencing statute, § 16-90-120, was insufficient to preserve the issue on appeal. *Johnson v. State*, 2020 Ark. App. 446, 608 S.W.3d 162 (2020).

There was no meritorious challenge to the trial court's denial of a directed verdict motion as to the felon in possession of a firearm charges where defendant demonstrated control over a gun found in a safe when he gave the officers the combination and advised them of its presence, and he admitted to the police that he had possessed two guns found in the trunk and had put them there. *House v. State*, 2020 Ark. App. 452, 611 S.W.3d 197 (2020).

Evidence.

State did not present sufficient evidence on which a fact finder could have convicted defendant of being a felon in possession of a firearm. A firearm was never recovered and presented as being one that defendant had possessed, and there was no video or photographic evidence that defendant had possessed a gun. *Holmes v. State*, 2019 Ark. App. 384, 586 S.W.3d 183 (2019).

Preservation for Review.

Defendant's argument that the evidence was insufficient to sustain his conviction for felon in possession of a firearm was preserved for review despite the State's argument concerning defendant's failure to use the word "constructive" in his directed verdict motion at the close of the State's case; the broad term "possession" encompassed the more precise term "constructive possession" because defendant essentially argued constructive possession in his initial directed verdict motion. *Bens v. State*, 2020 Ark. App. 6, 593 S.W.3d 495 (2020).

Sentencing.

Circuit court properly sentenced defendant as a habitual offender to 12 years' imprisonment for possession of a firearm by certain persons, Class B felony, because defendant's prior federal conviction for aggravated assault qualified as a "prior violent felony conviction" under this section and § 5-73-101; assault with a dangerous weapon in the federal statute, 18 U.S.C. § 113, met the "serious physical force" requirement in § 5-73-101(11)(B) because the threat of bodily impact, restraint, or confinement when committed with a dangerous weapon is a threat of serious force. *Seyller v. State*, 2019 Ark. App. 423, 586 S.W.3d 685 (2019).

5-73-107. Possession of a defaced firearm.

CASE NOTES

Evidence Sufficient.

Sufficient evidence supported defendant's conviction of felony, rather than misdemeanor, possession of a defaced firearm; it was irrelevant that there was another retrievable serial number on the gun because the outer serial number was

defaced, it was not "merely covered or obstructed", and furthermore, defendant admitted he possessed a firearm with a defaced outer serial number. *Jimmerson v. State*, 2019 Ark. App. 578, 590 S.W.3d 764 (2019).

5-73-120. Carrying a weapon.

CASE NOTES

Evidence and Proof.

Stipulated facts were insufficient to prove that defendant unlawfully carried a weapon because the State failed to present substantial evidence that defendant possessed the gun with the purpose to unlawfully employ it against a person, as

it showed that he appeared intoxicated and unsteady and he told the officers he had a pistol, which was removed from his pocket without incident. Defendant had not brandished his gun at anyone, he did not announce to anyone that he possessed a gun, and he never threatened anyone.

Pettry v. State, 2020 Ark. App. 162, 595 S.W.3d 442 (2020).

5-73-122. Carrying a firearm in publicly owned buildings or facilities.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Amie assembly, 40 U. Ark. Little Rock L. Rev. 305 Alexander & Sarah Giammo, Survey of (2017). Legislation 2017: Arkansas General As-

SUBCHAPTER 3 — CONCEALED HANDGUNS

SECTION.
5-73-322. Concealed handguns in a uni- versity, college, or commu- nity college building.

Effective Dates. Acts 2020, No. 97, § 49: July 1, 2020. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2020 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the legislative session, the delay in the effective date of this Act beyond July 1, 2020 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2020.”

5-73-322. Concealed handguns in a university, college, or community college building.

- (a)(1) As used in this section, “public university, public college, or community college” means an institution that:
- (A) Regularly receives budgetary support from the state government;
 - (B) Is part of the University of Arkansas or Arkansas State University systems; or
 - (C) Is required to report to the Arkansas Higher Education Coordinating Board.
- (2) “Public university, public college, or community college” includes without limitation a public technical institute.
- (3) “Public university, public college, or community college” does not include a private university or private college solely because:
- (A) Students attending the private university or private college receive state-supported scholarships; or
 - (B) The private university or private college voluntarily reports to the board.

(b) A licensee who has completed the training required under subsection (g) of this section may possess a concealed handgun in the buildings and on the grounds of a public university, public college, or community college, whether owned or leased by the public university, public college, or community college, unless otherwise prohibited by this section or § 5-73-306.

(c)(1) A licensee may possess a concealed handgun in the buildings and on the grounds of a private university or private college unless otherwise prohibited by this section or § 5-73-306 if the private university or private college does not adopt a policy expressly disallowing the carrying of a concealed handgun in the buildings and on the grounds of the private university or private college.

(2)(A) A private university or private college that adopts a policy expressly disallowing the carrying of a concealed handgun in the buildings and on the grounds of the private university or private college shall post notices as described in § 5-73-306(18).

(B) A private university or private college that adopts a policy only allowing carrying of a concealed handgun under this section shall post notices as described in § 5-73-306(18) and subdivision (c)(2)(C) of this section.

(C) If a private university or private college permits carrying a concealed handgun under this section, the private university or private college may revise any sign or notice required to be posted under § 5-73-306(18) to indicate that carrying a concealed handgun under this section is permitted.

(d) The storage of a handgun in a university or college-operated student dormitory or residence hall is prohibited under § 5-73-119(c).

(e)(1) A licensee who may carry a concealed handgun in the buildings and on the grounds of a public university, public college, or community college under this section may not carry a concealed handgun into a location in which an official meeting lasting no more than nine (9) hours is being conducted in accordance with documented grievance and disciplinary procedures as established by the public university, public college, or community college if:

(A) At least twenty-four (24) hours' notice is given to participants of the official meeting;

(B) Notice is posted on the door of or each entryway into the location in which the official meeting is being conducted that possession of a concealed handgun by a licensee under this section is prohibited during the official meeting; and

(C) The area of a building prohibited under this subdivision (e)(1) is no larger than necessary to complete the grievance or disciplinary meeting.

(2) A person who knowingly violates subdivision (e)(1) of this section upon conviction is guilty of:

(A) A violation for a first offense and subject to a fine not exceeding one hundred dollars (\$100); and

(B) A Class C misdemeanor for a second or subsequent offense.

(f) This section does not affect a licensee's ability to store a concealed handgun in his or her vehicle under § 5-73-306(13)(B)(v).

(g)(1) A licensee who intends to carry a concealed handgun in the buildings and on the grounds of a public university, public college, or community college is required to complete a training course approved by the Director of the Division of Arkansas State Police.

(2)(A) Training required under this subsection shall:

- (i) Not be required to be renewed;
- (ii) Consist of a course of up to eight (8) hours;
- (iii) Be offered at the training instructor's option at concealed carry training courses; and
- (iv) Cost no more than a nominal amount.

(B) The director may waive up to four (4) hours of the training required under this subsection for a licensee based on the licensee's prior training attended within ten (10) years of applying for the endorsement provided for under subdivision (g)(3) of this section on appropriate topics.

(3) A licensee who completes a training course under this subsection shall be given a concealed carry endorsement by the Division of Arkansas State Police on his or her license to carry a concealed handgun indicating that the person is permitted to possess and carry a concealed handgun in the buildings and on the grounds of a public university, public college, or community college.

(h) A licensee who completes a training course and obtains a concealed carry endorsement under subsection (g) of this section is exempted from the prohibitions and restrictions on:

(1) Carrying a firearm in a publicly owned building or facility under § 5-73-122, if the firearm is a concealed handgun; and

(2) Carrying a concealed handgun in a prohibited place listed under § 5-73-306(7)-(12), (14), (15), and (17), unless otherwise prohibited under § 5-73-306(19) or § 5-73-306(20).

(i) The division shall maintain a list of licensees who have successfully completed a training course under subsection (g) of this section.

(j)(1) Unless possession of a concealed handgun is a requirement of a licensee's job description, the possession of a concealed handgun under this section is a personal choice made by the licensee and not a requirement of the employing public university, public college, or community college.

(2) A licensee who possesses a concealed handgun in the buildings and on the grounds of a public university, public college, or community college at which the licensee is employed is not:

(A) Acting in the course of or scope of his or her employment when possessing or using a concealed handgun;

(B) Entitled to worker's compensation benefits for injuries arising from his or her own negligent acts in possessing or using a concealed handgun;

(C) Immune from personal liability with respect to possession or use of a concealed handgun; or

(D) Permitted to carry a concealed handgun openly or in any other manner in which the concealed handgun is visible to ordinary observation.

(3) A public university, public college, or community college is immune from a claim for monetary damages arising from or related to a licensee's use of, or failure to use, a concealed handgun if the licensee elects to possess a concealed handgun under this section.

History. Acts 2013, No. 226, § 5; 2015, No. 1155, § 16; 2017, No. 562, § 6; 2017, No. 859, §§ 7, 8; 2019, No. 910, §§ 5752-5755; 2020, No. 97, § 46.

Amendments. The 2020 amendment

rewrote (g)(2)(A)(iii); substituted "director" for "Director of the Division of Arkansas State Police" in (g)(2)(B); inserted "indicating" in (g)(3); and made a stylistic change.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Amie Alexander & Sarah Giammo, Survey of Legislation 2017: Arkansas General As-

sembly, 40 U. Ark. Little Rock L. Rev. 305 (2017).

CHAPTER 74

GANGS

SUBCHAPTER 1 — ARKANSAS CRIMINAL GANG, ORGANIZATION, OR ENTERPRISE ACT

5-74-106. Simultaneous possession of drugs and firearms.

CASE NOTES

Defense.

Trial court did not abuse its discretion in refusing to submit an affirmative-defense jury instruction under subsection (d) of this section with respect to a charge of simultaneous possession of drugs and firearms. Because defendant was not inside

his residence but was either in a detached garage or immediately outside the garage, there was no basis to conclude that defendant was in his home when the firearms were found. *House v. State*, 2020 Ark. App. 240, 600 S.W.3d 106 (2020).

5-74-107. Unlawful discharge of a firearm from a vehicle.

CASE NOTES

Lesser-Included Offenses.

Trial court did not err in failing to instruct the jury on negligent homicide because it was not a lesser-included offense of unlawful discharge of a firearm from a vehicle, and defendant's proffered instruction did not meet any of the three alternative tests set out in § 5-1-110

where the culpable mental state for negligent homicide was directed at the act of causing the death of another person and the culpable mental state for first-degree unlawful discharge of a firearm from a vehicle was directed at the act of discharging the firearm. *Webb v. State*, 2019 Ark. App. 436, 587 S.W.3d 252 (2019).

TITLE 6

EDUCATION

SUBTITLE 5. POSTSECONDARY AND HIGHER EDUCATION GENERALLY

- CHAPTER.
62.

PROPERTY AND FINANCES OF STATE INSTITUTIONS.
63.

EMPLOYEES OF STATE INSTITUTIONS.
65.

AGRICULTURAL COLLEGES.
66.

HENDERSON STATE UNIVERSITY.

SUBTITLE 3. SPECIAL EDUCATIONAL PROGRAMS

CHAPTER 41

CHILDREN WITH DISABILITIES

SUBCHAPTER 2 — CHILDREN WITH DISABILITIES ACT OF 1973

6-41-216. Tests and evaluations — Change of child’s status — Hearings.

CASE NOTES

Statute of Limitations.

Federal district court did not err in dismissing, on statute of limitations grounds, parents’ claim that sought attorney’s fees as the prevailing party of the administrative-level hearing under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq.; the court did not err in borrowing the 90-day statute of limitations from subsection (g) of this section, a provision of Arkansas’s statutory framework for IDEA compliance. Richardson v. Omaha Sch. Dist., 957 F.3d 869 (8th Cir. 2020).

SUBTITLE 5. POSTSECONDARY AND HIGHER EDUCATION GENERALLY

CHAPTER 62

PROPERTY AND FINANCES OF STATE INSTITUTIONS

- SUBCHAPTER.
3.

FACILITIES — CONSTRUCTION OR PURCHASE.

SUBCHAPTER 3 — FACILITIES — CONSTRUCTION OR PURCHASE

SECTION.

6-62-306. Bonds or notes — Issuance on advice of Arkansas Higher Education Coordinating Board.

Effective Dates. Acts 2021, No. 18, § 23: Feb. 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Henderson State University is scheduled for reaffirmation of accreditation based on requirements imposed by the regional Higher Learning Commission and federal regulations; that Henderson State University has already received from the Higher Learning Commission Board of Trustees one (1) extension of accreditation related to its Change of Control application wherein Henderson State University joins the Arkansas State University system; and that this act is immediately necessary because Henderson

State University must host a focused visit within a certain timeframe in order to receive reaffirmation of accreditation and become a member institution of the Arkansas State University system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

6-62-306. Bonds or notes — Issuance on advice of Arkansas Higher Education Coordinating Board.

(a) The boards of trustees of the University of Arkansas, University of Central Arkansas, Henderson State University, Arkansas State University System, Arkansas Tech University, and Southern Arkansas University, hereinafter referred to as the "board of the institution involved", shall not issue any notes or bonds under the provisions of this subchapter for any of the purposes authorized by this subchapter, unless prior to the issuance of such notes or bonds, the board of the institution involved shall have obtained the advice of the Arkansas Higher Education Coordinating Board as to the economic feasibility of the particular project to be financed, in whole or in part, by those notes or bonds.

(b) The board of the institution involved shall submit to the Arkansas Higher Education Coordinating Board information pertaining to the proposed project concerning existing and proposed buildings, improvements, equipment, and facilities of the institution involved; finances, revenues, appropriations, and cash funds of the institution involved; and enrollment, housing, and other information deemed pertinent to and requested by the Arkansas Higher Education Coordinating Board to enable the board to determine the feasibility of the project.

(c) The Arkansas Higher Education Coordinating Board shall notify the board of the institution involved, within thirty (30) days from the date the information is submitted to the board, of the board's advice with respect to the economic feasibility of the particular project.

(d) The advice of the Arkansas Higher Education Coordinating Board under this section shall not be binding on the board of the institution involved.

(e)(1) This section shall not be construed to deprive, transfer, limit, or in any way alter or change any of the powers vested in the board of

the institution involved under existing constitutional and statutory provisions.

(2) Furthermore, the authority conferred upon the Arkansas Higher Education Coordinating Board by this section shall not extend to the feasibility of the notes or bonds proposed to be issued by the board of the institution involved or to any of the terms, conditions, and provisions thereof, and this section shall not be construed to impair in any way the validity of any notes or bonds issued by the board of the institutions involved under this subchapter or impair or affect in any way the obligations of the board of the institution involved or the rights of any holder or registered owner of the notes or bonds.

History. Acts 1963, No. 242, §§ 1-4; A.S.A. 1947, §§ 80-3328 — 80-3331; Acts 2021, No. 18, § 1.

CHAPTER 63

EMPLOYEES OF STATE INSTITUTIONS

SUBCHAPTER.

3. HIGHER EDUCATION EXPENDITURE RESTRICTION ACT.

SUBCHAPTER 3 — HIGHER EDUCATION EXPENDITURE RESTRICTION ACT

SECTION.

6-63-305. New or additional positions.

Effective Dates. Acts 2020, No. 129, § 11: July 1, 2020. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2020 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the legislative session, the delay in the effective date of this Act beyond July 1, 2020 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2020."

6-63-305. New or additional positions.

(a)(1) In the event that additional federal funds, grants, gifts, or collections become available that were not authorized or contemplated at the time of the passage of the fiscal year appropriation act for operations for each institution enumerated in subsection (b) of this section, that such new funds make it possible for the recipient institution to engage in educational projects that would be of benefit to the

State of Arkansas, and that such projects would make it necessary to employ additional personnel, the president of the recipient institution may establish the positions if:

(A) A request for a specific nonclassified position, title, and salary has been requested by the institution of higher education, approved by the institution's board of trustees, recommended by the Division of Higher Education, and reported to the Legislative Council; or

(B) A request for a specific classified position will be assigned only after a specific position, class title, and grade are requested by the institution of higher education, approved by the institution's board, recommended by the division and reported to the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee; and

(C) The salary rates for these positions do not exceed the highest maximum annual salary rate or the highest grade for any position authorized in the regular salary section of the requesting institution's appropriation act for operations, under the Higher Education Uniform Classification and Compensation Act, § 21-5-1401 et seq.

(2) The number of additional positions shall not exceed the maximum number of positions authorized for the institution in the appropriation act for operations.

(3) The source of funding for the additional positions established under this subsection shall be reported to the division and the Legislative Council by the institution at the time of the request.

(4) Determining the number of persons to be employed by an institution of higher education is the prerogative of the General Assembly and is usually accomplished by delineating the maximum number of persons by identifying the job titles and the maximum grades or salaries attached to them. The General Assembly has determined that the institutions of higher education could be operated more efficiently if some flexibility were given to the institutions. That flexibility is being accomplished by providing new or additional positions in subsection (b) of this section, and since the General Assembly has granted the institutions broad powers under the new or additional position concept, it is both necessary and appropriate that the General Assembly maintain oversight of the utilization of the new or additional positions by requiring prior approval of the Legislative Council in the utilization of the new or additional positions. Therefore, the requirement of approval by the Legislative Council is not a severable part of this section. If the requirement of approval by the Legislative Council is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

(b) The following maximum number of new additional positions is established for the biennium for the following institutions of higher education at salary rates not to exceed the salary rate or the highest grade level position of comparable positions established in the regular salaries section of the appropriations act for operations for each institution:

Institution	Maximum Number of Additional Positions
(1) Arkansas State University-Jonesboro	325
(2) Arkansas State University-Mountain Home	40
(3) Arkansas State University-Beebe	100
(4) Arkansas State University-Newport	60
(5) Arkansas Tech University	65
(6) Black River Technical College	44
(7) Cossatot Community College of the University of Arkansas	105
(8) East Arkansas Community College	40
(9) National Park College	40
(10) Henderson State University	60
(11) Arkansas State University Mid-South	75
(12) Arkansas Northeastern College	70
(13) North Arkansas College	70
(14) Northwest Arkansas Community College	80
(15) Arkansas State University Three Rivers	40
(16) Ozarka College	46
(17) University of Arkansas Community College at Morrilton	40
(18) Phillips Community College of the University of Arkansas	40
(19) University of Arkansas — Pulaski Technical College	80
(20) University of Arkansas Community College at Rich Mountain	40
(21) South Arkansas Community College	50
(22) Southeast Arkansas College	60
(23) Southern Arkansas University	70
(24) SAU-Tech	40
(25) University of Arkansas at Fayetteville	750
(26) University of Arkansas — Agricultural Experiment Station	250
(27) University of Arkansas Cooperative Extension Service	250
(28) University of Arkansas — Arkansas Archeological Survey	150
(29) University of Arkansas — Criminal Justice Institute	250
(30) University of Arkansas at Little Rock	300

(31) University of Arkansas for Medical Sciences	1,000
(32) University of Arkansas at Monticello	100
(33) University of Arkansas at Pine Bluff	130
(34) University of Arkansas Community College at Batesville	40
(35) University of Arkansas Community College at Hope-Texarkana	40
(36) University of Central Arkansas	300
(37) University of Arkansas at Fort Smith	40
(38) University of Arkansas — Arkansas School for Mathematics, Sciences, and the Arts	60
(39) University of Arkansas — Clinton School of Public Service	75
(40) University of Arkansas system	50

(c) The positions established under this subchapter shall expire at the end of the fiscal year in which they are established.

(d) Each institution shall include in its annual budget request presented to the Legislative Council a request to continue any position authorized under this subchapter.

History. Acts 1983, No. 147, § 4; 1985, No. 845, § 1; A.S.A. 1947, § 80-5604; Acts 1989, No. 36, § 1; 1991, No. 1089, § 1; 1993, No. 823, § 2; 1995, No. 70, § 1; 1995, No. 1164, §§ 1, 3; 1999, No. 664, § 1; 2001, No. 739, § 1; 2003, No. 1460, § 1; 2003 (1st Ex. Sess.), No. 30, § 33; 2005, No. 2123, § 34; 2005, No. 2200, § 1; 2007, No. 620, § 1; 2007, No. 1255, § 38;

2009, No. 245, § 1; 2009, No. 688, § 1; 2009, No. 1334, § 37; 2015, No. 1273, §§ 1-3; 2016, No. 140, § 9; 2016, No. 141, § 9; 2017, No. 178, § 5; 2017, No. 179, § 7; 2017, No. 599, § 1; 2019, No. 204, § 1; 2019, No. 710, §§ 1, 2; 2019, No. 910, §§ 2005, 2006; 2020, No. 129, § 8.

Amendments. The 2020 amendment rewrote (b)(15).

CHAPTER 65

AGRICULTURAL COLLEGES

SUBCHAPTER.

2. ARKANSAS STATE UNIVERSITY.

SUBCHAPTER 2 — ARKANSAS STATE UNIVERSITY

SECTION.	SECTION.
6-65-201. Board of Trustees of Arkansas State University.	6-65-211. ASU-Beebe — Faculty and staff.
6-65-202. Powers and duties of board.	6-65-212. ASU-Beebe — Tuition and admissions.
6-65-203. Right of eminent domain.	6-65-213. [Repealed.]
6-65-208. ASU-Beebe — Board of trustees.	6-65-214. ASU-Beebe — Rental of unused property authorized.
6-65-209, 6-65-210. [Repealed.]	

SECTION.

6-65-217. Arkansas State Technical Institute — Legislative findings, determinations, and intent.

SECTION.

6-65-218. [Repealed.]
 6-65-221 — 6-65-224. [Repealed.]
 6-65-226. Housing allowance.

Effective Dates. Acts 2021, No. 18, § 23: Feb. 1, 2021. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Henderson State University is scheduled for reaffirmation of accreditation based on requirements imposed by the regional Higher Learning Commission and federal regulations; that Henderson State University has already received from the Higher Learning Commission Board of Trustees one (1) extension of accreditation related to its Change of Control application wherein Henderson State University joins the Arkansas State University system; and that this act is immediately necessary because Henderson

State University must host a focused visit within a certain timeframe in order to receive reaffirmation of accreditation and become a member institution of the Arkansas State University system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

6-65-201. Board of Trustees of Arkansas State University.

- (a) There is created a board constituting the Board of Trustees of the Arkansas State University System.
- (b)(1) The board shall consist of seven (7) members appointed from the state at large.
- (2) The Governor, by and with the advice and consent of the Senate, shall appoint the members of the board.
- (3) The Secretary of State shall furnish a certificate to each board member within ten (10) days following appointment, whereupon the appointee shall notify the Governor and the Secretary of State in writing of his or her acceptance of the appointment within thirty (30) days, and if the appointee shall fail to give such notice of his or her acceptance within the time required, then the appointment shall be declared void and another appointment shall be made.
- (c)(1) Members of the board appointed by the Governor under the provisions of this section, in addition to possessing the qualifications of an elector, shall reside in the State of Arkansas.
- (2)(A) The Governor, Attorney General, Secretary of State, Auditor of State, Treasurer of State, Commissioner of State Lands, a Justice of the Supreme Court, and the director or employees of any state department, state agency, or state institution shall be ineligible for membership on the board provided for in this section during the time for which he or she was elected or appointed.

(B) No individual may be a member of more than one (1) of the boards created under the provisions of § 25-17-201 at the same time.

(d)(1) The term of office for each member shall commence on January 15 and shall end on January 14 of the seventh year following the year in which the regular term commenced.

(2) On or before the fourteenth day following the commencement of each regular session of the General Assembly, the Governor shall submit to the Senate for approval the names of all unconfirmed appointments made by him or her to fill expired terms and the names of appointments to fill the terms expiring during the regular session of the General Assembly. The members appointed by the Governor to fill vacancies caused by the expiration of the terms of members may qualify and hold office until the appointments are rejected by the Senate.

(e) Vacancies on the board shall be filled by appointments by the Governor from the state at large.

(f) Any vacancies arising in the membership of the board for any reason other than the expiration of the regular terms for which the members were appointed shall be filled by the appointment of the Governor, subject to the approval by a majority of the remaining members of the board and shall be thereafter effective until the expiration of the regular terms.

(g)(1) Before entering upon his or her respective duties, each board member shall take and subscribe and file in the office of the Secretary of State an oath to support the United States Constitution and the Arkansas Constitution and to faithfully perform the duties of the office upon which he or she is about to enter and that he or she will not be or become interested, directly or indirectly, in any contract made by the board.

(2)(A) Any violation of the oath shall be a Class B misdemeanor.

(B) Any contract entered into in violation of the oath shall be void.

(h) Members of the board provided for in this section may receive expense reimbursement in accordance with § 25-16-901 et seq.

(i)(1) The Governor shall have the power to remove any member of the board before the expiration of his or her term for cause only, after notice and hearing.

(2) The removal shall become effective only when approved in writing by a majority of the total number of the board, but the member removed or his or her successor shall have no right to vote on the question of removal.

(3) The removal action shall be filed with the Secretary of State, together with a complete record of the proceedings at the hearing.

(4)(A) An appeal may be taken to the Pulaski County Circuit Court by the Governor or the member ordered removed, and the appeal shall be tried de novo on the record of the hearing before the Governor.

(B) An appeal may be taken from the circuit court to the Supreme Court, which shall likewise be tried de novo.

History. Acts 1943, No. 1, §§ 2, 4-7; 1967, No. 3, § 2; 1967, No. 18, § 2; A.S.A. 1947, §§ 7-201, 7-203, 7-204 — 7-206, 80-3124.1; Acts 1997, No. 250, § 33; 2005, No. 1994, § 389; 2021, No. 18, §§ 2-4.

A.C.R.C. Notes. Acts 2021, No. 18, § 22, provided: "The terms of the two (2) additional members of the Board of Trustees of the Arkansas State University System appointed from the state at large by

the Governor, by and with the advice and consent of the Senate, and created by this act shall be staggered as follows:

"(1) The term of the first additional member shall expire six (6) years from initial appointment; and

"(2) The term of the second additional member shall expire five (5) years from initial appointment."

6-65-202. Powers and duties of board.

(a) The Board of Trustees of the Arkansas State University System created in § 6-65-201 is charged with the management and control of the Arkansas State University System.

(b) The board shall have the power, authority, and duties formerly conferred by law on the board it succeeds.

History. Acts 1943, No. 1, § 3; A.S.A. 1947, § 7-202; Acts 2021, No. 18, § 5.

6-65-203. Right of eminent domain.

(a) The right of eminent domain is granted to Arkansas State University located at Jonesboro, to condemn property, wherever and whenever the acquisition of property is necessary for the use of the university. However, homesteads as of March 28, 1947, shall not be deemed to come within the provisions of this section.

(b) All suits for condemnation of property under the provisions of this section shall be brought by the university in the name of the State of Arkansas.

(c)(1) Before any suit can be instituted, it shall be necessary for the Board of Trustees of the Arkansas State University System to pass a resolution to the effect that the acquisition of the property sought to be condemned is necessary for the use and benefit of the university.

(2) The resolution shall also set forth the purpose for which the lands are to be condemned, together with the legal description of the lands.

(d)(1) Upon adoption of the resolution, the board is authorized to request the prosecuting attorney of the district in which the lands are situated to assist in instituting proper proceedings for the condemnation of the lands.

(2) In the event any prosecuting attorney is requested to institute or to assist in instituting such proceedings, it shall then be the duty of that prosecuting attorney to comply with the request of the board.

(e) It shall be the duty of the Attorney General of the State of Arkansas to handle all appeals taken to the Supreme Court of the state from any such actions.

History. Acts 1947, No. 333, §§ 1-3; A.S.A. 1947, §§ 80-3121 — 80-3123; Acts 2021, No. 18, § 6.

6-65-208. ASU-Beebe — Board of trustees.

The Board of Trustees of the Arkansas State University System is empowered to exercise any powers, rights, and obligations in regard to Arkansas State University-Beebe that it is now empowered and authorized by law to exercise in regard to Arkansas State University.

History. Acts 1955, No. 84, § 4; A.S.A. 1947, § 80-3138; Acts 2001, No. 90, § 1; 2021, No. 18, § 7.

6-65-209, 6-65-210. [Repealed.]

Publisher's Notes. These sections, concerning counties composing district for ASU-Beebe and course of study, were repealed by Acts 2021, No. 18, § 8, effective February 1, 2021. The sections were derived from the following sources:

6-65-209. Acts 1927, No. 132, § 3; Pope's Dig., § 12974; A.S.A. 1947, § 80-3136; Acts 2001, No. 90, § 2.

6-65-210. Acts 1927, No. 132, § 5; Pope's Dig., § 12976; A.S.A. 1947, § 80-3139.

6-65-211. ASU-Beebe — Faculty and staff.

(a) The faculty of Arkansas State University-Beebe shall consist of:

(1) A principal, who shall be a graduate of some reputable school of agriculture and well versed in practical farming in such soils as surround the university;

(2) One (1) instructor in stock raising, poultry, and dairying, who shall have had practical work as such; and

(3) Such assistants as may be necessary.

(b) The Board of Trustees of the Arkansas State University System may combine the duties of any of the positions listed in subsection (a) of this section when practical.

History. Acts 1927, No. 132, § 6; Pope's Dig., § 12977; A.S.A. 1947, § 80-3140; Acts 2001, No. 90, § 3; 2021, No. 18, § 9.

6-65-212. ASU-Beebe — Tuition and admissions.

(a) The tuition in Arkansas State University-Beebe shall be determined by the Board of Trustees of the Arkansas State University System.

(b) The board may limit the number of students from time to time according to the capacity and means of the institution and shall make such rules of admission as to equalize as nearly as practical the privileges of the university among the counties composing the district according to population.

(c) No student under fifteen (15) years of age shall be admitted as a student of the university.

History. Acts 1927, No. 132, § 8; Pope's Dig., § 12979; A.S.A. 1947, § 80-3142; Acts 2003, No. 634, § 2; 2021, No. 18, § 10.

6-65-213. [Repealed.]

Publisher's Notes. This section, concerning ASU-Beebe — labor performed by students, was repealed by Acts 2021, No. 18, § 11, effective February 1, 2021. The section was derived from Acts 1927, No. 132, § 7; Pope's Dig., § 12978; A.S.A. 1947, § 80-3141; Acts 2019, No. 315, § 386.

6-65-214. ASU-Beebe — Rental of unused property authorized.

The Board of Trustees of the Arkansas State University System is authorized to rent to the best advantage from time to time any portion of the property of Arkansas State University-Beebe not required for the immediate use of the university.

History. Acts 1927, No. 132, § 8; Pope's Dig., § 12979; A.S.A. 1947, § 80-3142; Acts 2021, No. 18, § 12.

6-65-217. Arkansas State Technical Institute — Legislative findings, determinations, and intent.

It is found and determined by the Seventy-Fifth General Assembly of the State of Arkansas that:

(1) The education and employment of its populace are two (2) of the highest goals of modern government;

(2) Technological advancements in industrial production and business are changing the means and methods in which business is conducted in world markets;

(3) Existing businesses and industries in Arkansas must respond to these changes in order to survive;

(4) If the state is to develop a stronger economic base, steps must be taken to provide existing businesses and industries with the tools necessary for continued development, and new industries must be convinced of the state's desire to have them locate within our borders;

(5) In both instances a highly educated and trained work force is an essential element;

(6) Although improvements have been and are being made in secondary and postsecondary vocational and technical education programs in the state, no program currently exists which combines applied advanced mathematics and science and general education with highly technical vocational programs at the certificate and associate degree level; and

(7) The financial resources of the state dictate that such a program should be established for the State of Arkansas.

History. Acts 1985, No. 496, § 5; A.S.A. 1947, § 80-3151; Acts 2021, No. 18, § 13.

6-65-218. [Repealed.]

Publisher's Notes. This section, concerning establishment of the Arkansas State Technical Institute, was repealed by Acts 2021, No. 18, § 14, effective Febru-

ary 1, 2021. The section was derived from Acts 1985, No. 496, § 6; A.S.A. 1947, § 80-3152; Acts 2001, No. 90, § 6.

6-65-221 — 6-65-224. [Repealed.]

Publisher's Notes. These sections, concerning the Arkansas State Technical Institute general operations, admissions, advanced placement, etc., tuition, fees, charges, etc., and reporting requirements, were repealed by Acts 2021, No. 18, § 15, effective February 1, 2021. The sections were derived from the following sources:

6-65-221. Acts 1985, No. 496, § 8;

A.S.A. 1947, § 80-3154; Acts 2001, No. 90, § 7; 2019, No. 315, § 387.

6-65-222. Acts 1985, No. 496, § 8; A.S.A. 1947, § 80-3154; Acts 2019, No. 315, § 388.

6-65-223. Acts 1985, No. 496, § 8; A.S.A. 1947, § 80-3154.

6-65-224. Acts 1985, No. 496, § 9; A.S.A. 1947, § 80-3155.

6-65-226. Housing allowance.

Upon approval by the Board of Trustees of the Arkansas State University System, the chancellor, or the director if there is no chancellor, of a campus of the Arkansas State University System may receive a housing allowance in an amount not to exceed one thousand five hundred dollars (\$1,500) per month in lieu of college housing.

History. Acts 1995, No. 1035, § 7; 2001, No. 90, § 8; 2021, No. 18, § 16.

CHAPTER 66**HENDERSON STATE UNIVERSITY****SECTION.**

6-66-101. [Repealed.]

6-66-102. Abolishment of board.

SECTION.

6-66-103. [Repealed.]

6-66-110 — 6-66-113. [Repealed.]

A.C.R.C. Notes. Acts 2020, No. 30, § 7, provided: "LOAN. Notwithstanding the provisions of Arkansas Code Annotated § 19-5-501, immediately upon the effective date of this section [April 17, 2020], the President of Henderson State University is authorized to request the Chief Fiscal Officer of the State to make a loan on his or her books in the amount not to exceed six million dollars (\$6,000,000) from the Budget Stabilization Trust Fund to the Henderson State University Fund. Loan repayments shall be made from time to time from any legal fund of Henderson State University and the entire amount of

the loan shall be repaid to the Budget Stabilization Trust Fund no later than June 30, 2028 or as recommended by the General Assembly upon review of the loan status, which shall be presented to the Arkansas Legislative Council or the Joint Budget Committee no later than June 30 each year."

Effective Dates. Acts 2021, No. 18, § 23; Feb. 1, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that Henderson State University is scheduled for reaffirmation of accreditation based on requirements imposed by

the regional Higher Learning Commission and federal regulations; that Henderson State University has already received from the Higher Learning Commission Board of Trustees one (1) extension of accreditation related to its Change of Control application wherein Henderson State University joins the Arkansas State University system; and that this act is immediately necessary because Henderson State University must host a focused visit within a certain timeframe in order to receive reaffirmation of accreditation and become a member institution of the Ar-

kansas State University system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

6-66-101. [Repealed.]

Publisher's Notes. This section, concerning the Board of Trustees of Henderson State University, was repealed by Acts 2021, No. 18, § 17, effective February 1, 2021. The section was derived from Acts 1929, No. 46, §§ 6, 7; Pope's Dig.,

§§ 13111, 13112; Acts 1941, No. 128, § 6; 1943, No. 1, §§ 2, 4-7; A.S.A. 1947, §§ 7-201, 7-203, 7-204 — 7-206, 80-2704, 80-2705; Acts 1997, No. 250, § 37; 2005, No. 1994, § 392; 2009, No. 595, § 8.

6-66-102. Abolishment of board.

(a) The Board of Trustees of Henderson State University is abolished as a separate entity with responsibility for the governance of Henderson State University and is transferred to the control of the Board of Trustees of the Arkansas State University System.

(b) The Board of Trustees of Henderson State University shall:

(1) Relinquish all responsibility, control, and supervision concerning Henderson State University; and

(2) Be divested of all obligations and duties applicable to Henderson State University that are abolished by this section.

(c) The Board of Trustees of the Arkansas State University System shall become vested with and succeed to all of the following that were vested with the Board of Trustees of Henderson State University before its abolishment under subsection (a) of this section:

- (1) Rights;
- (2) Powers;
- (3) Interests;
- (4) Duties;
- (5) Responsibilities;
- (6) Titles; and
- (7) Interests in and to all:
 - (A) Real property; and
 - (B) Personal property.

History. Acts 1929, No. 46, § 3; Pope's Dig., § 13108; Acts 1941, No. 128, § 4; 1943, No. 1, § 3; A.S.A. 1947, §§ 7-202,

80-2703; Acts 2003, No. 1230, § 1; 2019, No. 315, § 391; 2021, No. 18, § 18.

6-66-103. [Repealed.]

Publisher's Notes. This section, concerning participation in federal and state aid, was repealed by Acts 2021, No. 18, §

19, effective February 1, 2021. The section was derived from Acts 1941, No. 173, § 5.

6-66-110 — 6-66-113. [Repealed.]

Publisher's Notes. These sections, concerning custodian of funds — payment of bills and accounts, limitation of expenditures, right of eminent domain, and report by board of trustees, were repealed by Acts 2021, No. 18, § 20, effective February 1, 2021. These sections were derived from the following sources:

6-66-110. Acts 1929, No. 46, §§ 10, 11; Pope's Dig., §§ 13115, 13116; A.S.A. 1947, §§ 80-2708, 80-2709.

6-66-111. Acts 1929, No. 46, § 12; Pope's Dig., §§ 13101, 13117; A.S.A. 1947, § 80-2710.

6-66-112. Acts 1959, No. 16, §§ 1-3; A.S.A. 1947, §§ 80-2716 — 80-2718.

6-66-113. Acts 1929, No. 46, § 17; Pope's Dig., § 13121; A.S.A. 1947, § 80-2715; Acts 2019, No. 910, § 2012.

TITLE 7

ELECTIONS

CHAPTER 1

GENERAL PROVISIONS

7-1-101. Definitions.

CASE NOTES

Infamous Crimes.

Candidate for circuit court judge was not disqualified from running due to his conviction for a violation of § 27-14-306, the fictitious motor vehicle tags statute, as misdemeanor "infamous crimes" under Ark. Const., Art. 5, § 9 and § 7-1-101 are misdemeanor offenses in which "the finder of fact was required to find, or the defendant to admit, an act of deceit, fraud, or false statement", and the appellate

court could not say that a violation of § 27-14-306 required a finding or admission of deceit, fraud, or false statement. *Weeks v. Thurston*, 2020 Ark. 64, 594 S.W.3d 23 (2020).

While deceit, fraud, or a false statement certainly can be present in a violation of § 27-14-306, a finder of fact is not required under the statute to find deceit, fraud, or a false statement. *Weeks v. Thurston*, 2020 Ark. 64, 594 S.W.3d 23 (2020).

7-1-103. Miscellaneous misdemeanor offenses — Penalties — Definitions.

CASE NOTES

Unlawful Voting.

Circuit court properly declared an alderman-elect ineligible to run for public office because he had pled guilty to “voting more than once in an election” in violation of this section; the framers of Ark. Const., Art. 5, § 9 intended for an “infamous crime” to include crimes involving elements of deceit, dishonesty, impugning on the integrity of the office, and directly

impacting the person’s ability to serve as an elected official; and, with the inclusion of subdivision (b)(2)(A) of this section, the General Assembly deliberately chose to exclude from public office all persons found guilty of election-related misdemeanors, regardless of whether the record was later sealed. *Pruitt v. Smith*, 2020 Ark. 382, 610 S.W.3d 660 (2020).

CHAPTER 4

BOARDS OF ELECTION COMMISSIONERS AND OTHER ELECTION OFFICERS

SUBCHAPTER 1 — GENERAL PROVISIONS

Publisher’s Notes. This Effective Dates note is being set out to reflect an update to the 2019 supplement pamphlet.

Effective Dates. Acts 2019, No. 376, § 14: Mar. 8, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act amends the process for circulating initiative petitions and referendum petitions; and that the provisions of this act should become effective immediately so that its provisions apply to all petitions circulated after the passage of the act to avoid confusion in petition circulation. Therefore, an emergency is de-

clared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.” The emergency clause for Acts 2019, No. 376 was held to be defective in *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403.

7-4-101. State Board of Election Commissioners — Members — Officers — Meetings.

A.C.R.C. Notes. Acts 2020, No. 21, § 7, provided: “TRANSFER OF FUNDS. If the State Board of Election Commissioners is required to pay the expenses for any state supported preferential primary election, general primary election, nonpartisan general election, statewide special election or special primary election and funds are not available to pay for such elections, the Director of the State Board of Election Commissioners shall certify to the Chief

Fiscal Officer of the State the amount needed to pay the expenses of the election(s). Upon the approval of the Chief Fiscal Officer of the State, the amount certified shall be transferred from the Budget Stabilization Trust Fund to the Miscellaneous Agencies Fund Account of the State Board of Election Commissioners. All unused funds transferred under this provision shall be transferred back to the Budget Stabilization Trust Fund at

the end of each fiscal year. The Chief Fiscal Officer of the State shall initiate the necessary transfer documents to reflect all such transfers upon the fiscal records of the State Auditor, the State Treasurer and

the Chief Fiscal Officer of the State.

"The provisions of this section shall be in effect from July 1, 2020 through June 30, 2021."

CASE NOTES

ANALYSIS

Effective Date of 2019 Amendment.
Jurisdiction.

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was "to avoid confusion in petition circulation"; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

Jurisdiction.

Circuit court clearly had jurisdiction to hear a candidate's petition where she was challenging the eligibility of a competing Court of Appeals candidate. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

CHAPTER 5

ELECTION PROCEDURE GENERALLY

SUBCHAPTER 2 — PREELECTION PROCEEDINGS

7-5-201. Voter qualification.

CASE NOTES

Judicial Candidate Qualifications.

Circuit court did not clearly err in determining that an appointed district court judge was a qualified elector of a specific district, thereby qualifying her as a candidate for a position on the Court of Appeals; Ark. Const. Amend. 80, § 16(D) simply requires that justices and judges be qualified electors within the geographical area from which they are chosen and

does not contemplate a distinction between "residence" and "domicile". The appointed judge had established her physical presence in the district by purchasing a home, registering to vote, and assessing personal property there (even though she still owned another home outside the district). *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

7-5-204. Certification of measures and questions submitted to voters.

CASE NOTES

Mootness.

Amendment to state constitution was presented to the voters, who cast their ballots, the votes had been counted, the amendment was approved, and the deadline for certification of the election had

passed; appellant failed to seek a stay of certification and a judgment would have no practical legal effect, such that the issue was moot. *Kimbrell v. Thurston*, 2020 Ark. 392, 611 S.W.3d 186 (2020).

7-5-207. Ballots — Names included — Draw for ballot position.

CASE NOTES

ANALYSIS

Jurisdiction.

Preelection Challenge.

Qualification of Candidates.

Jurisdiction.

Circuit court clearly had jurisdiction to hear a candidate's petition where she was challenging the eligibility of a competing Court of Appeals candidate. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

Preelection Challenge.

Candidate's petition was compliant with Arkansas law where she brought a preelection attack on a competing Court of Appeals candidate's eligibility. The verification requirement in § 7-5-801 was inapplicable because that section is a postelection

procedure, while preelection attacks are brought under subsection (b) of this section, which does not have a verification requirement. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

Qualification of Candidates.

Circuit court properly granted a writ of mandamus and declaratory judgment in favor of the Republican Party's nominee for a House district because the Democratic Party's nominee had been convicted of crimes that disqualified him from serving in the Arkansas House of Representatives where the crimes involved "acts of deceit, fraud, or false statement" within the definition of "infamous crime" in Ark. Const., Art. 5, § 9, and his presidential pardon did not restore his eligibility to sit as a representative. *Gray v. Webb*, 2020 Ark. 385, 611 S.W.3d 466 (2020).

SUBCHAPTER 7 — RETURNS AND CANVASS

7-5-701. Declaration of results — Certification, delivery, and custody of returns.

CASE NOTES

Mootness.

Amendment to state constitution was presented to the voters, who cast their ballots, the votes had been counted, the amendment was approved, and the deadline for certification of the election had

passed; appellant failed to seek a stay of certification and a judgment would have no practical legal effect, such that the issue was moot. *Kimbrell v. Thurston*, 2020 Ark. 392, 611 S.W.3d 186 (2020).

SUBCHAPTER 8 — ELECTION CONTESTS

7-5-801. Right of action — Procedure.

CASE NOTES

Applicability.

Petition of candidate, who brought a preelection attack on the eligibility of a competing Court of Appeals candidate, was compliant with Arkansas law despite lacking an affidavit. This section is a post-

election procedure; preelection attacks are governed by § 7-5-207(b), and that section does not have a verification requirement. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

CHAPTER 6 CAMPAIGN PRACTICES

SUBCHAPTER 1 — GENERAL PROVISIONS

7-6-102. Political practices pledge — Penalty for falsification.

CASE NOTES

ANALYSIS

Inaccuracy in Pledge.
Surname.

Inaccuracy in Pledge.

Although, contrary to § 7-10-103, an appointed district court judge who had filed as a candidate for the Court of Appeals erroneously used the title “Judge” in her signature of the political practices pledge, section 7-10-103 did not restrict courts from ordering a change on the ballot and current law only sanctioned those who did not sign the pledge; there was no penalty for those found to have included inaccurate information on the pledge. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

Surname.

Appointed district court judge who had filed as a candidate for the Court of Appeals was not disqualified because she used her maiden surname on the political practices pledge rather than her married surname. The record indicated that the candidate was known professionally by her maiden name, and her use of her maiden name on the ballot title did not serve to undermine the spirit of the political practices pledge by obfuscating her true identity, nor did it run afoul of this section, which requires only that a candidate use their “surname”. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

SUBCHAPTER 2 — CAMPAIGN FINANCING

7-6-201. Definitions.

CASE NOTES

Candidate.

Political activist had standing to assert

a First Amendment challenge to the prohibition in § 7-6-203 against soliciting or

accepting campaign contributions more than two years before an election; the activist alleged a desire to donate in a future election cycle, submitted an affidavit, and alleged a credible threat of prosecution. A likelihood of success supported

a preliminary injunction because no evidence showed restricting early contributions furthered the state's anti-corruption interest more than contribution limits alone. *Jones v. Jegley*, 947 F.3d 1100 (8th Cir. 2020).

7-6-202. Penalties.

CASE NOTES

Standing to Challenge.

Political activist had standing to assert a First Amendment challenge to the prohibition in § 7-6-203 against soliciting or accepting campaign contributions more than two years before an election; the activist alleged a desire to donate in a future election cycle, submitted an affida-

vit, and alleged a credible threat of prosecution. A likelihood of success supported a preliminary injunction because no evidence showed restricting early contributions furthered the state's anti-corruption interest more than contribution limits alone. *Jones v. Jegley*, 947 F.3d 1100 (8th Cir. 2020).

7-6-203. Contributions — Limitations — Acceptance or solicitation — Use as personal income — Disposition.

CASE NOTES

Constitutionality.

Political activist had standing to assert a First Amendment challenge to the prohibition in this section against soliciting or accepting campaign contributions more than two years before an election; the activist alleged a desire to donate in a future election cycle, submitted an affida-

vit, and alleged a credible threat of prosecution. A likelihood of success supported a preliminary injunction because no evidence showed restricting early contributions furthered the state's anti-corruption interest more than contribution limits alone. *Jones v. Jegley*, 947 F.3d 1100 (8th Cir. 2020).

7-6-218. Citizen complaints — Definition.

CASE NOTES

Validity of Statute.

Because the Arkansas Ethics Commission investigates campaign-finance violations, levies fines against candidates, and makes referrals to law enforcement, the

commissioners had a strong enough connection to a campaign finance law to make them proper defendants in a suit asserting a constitutional challenge. *Jones v. Jegley*, 947 F.3d 1100 (8th Cir. 2020).

CHAPTER 7

NOMINATIONS AND PRIMARY ELECTIONS

SUBCHAPTER 2 — PRIMARY ELECTIONS GENERALLY

7-7-205. Petition requirements for new political parties.

CASE NOTES

Constitutionality.

Petition requirements in this section for certification of new political parties that required 27,000 registered voters' signatures, with signatures less than 90 days old, and a petition deadline of 425 days prior to the general election, were likely

unconstitutional, and a preliminary injunction was upheld reducing the number of signatures to that required under prior law before the 2019 amendment. Libertarian Party of Ark. v. Thurston, 962 F.3d 390 (8th Cir. 2020).

SUBCHAPTER 3 — CONDUCT OF PRIMARY

7-7-305. Printing of ballots — Form — Draw for ballot position.

CASE NOTES

ANALYSIS

Judicial Candidate Title.
Surname.

Judicial Candidate Title.

Although, contrary to § 7-10-103, an appointed district court judge who had filed as a candidate for the Court of Appeals erroneously used the title "Judge" in her signature of the political practices pledge, section 7-10-103 did not restrict courts from ordering a change on the ballot and current law only sanctioned those who did not sign the pledge; there was no penalty for those found to have included inaccurate information on the pledge. Barrett v. Thurston, 2020 Ark. 36, 593 S.W.3d 1 (2020).

Surname.

Appointed district court judge who had filed as a candidate for the Court of Appeals was not disqualified because she used her maiden surname on the political practices pledge rather than her married surname. The record indicated that the candidate was known professionally by her maiden name, and her use of her maiden name on the ballot title did not serve to undermine the spirit of the political practices pledge by obfuscating her true identity, nor did it run afoul of this section, which requires only that a candidate use their "surname". Barrett v. Thurston, 2020 Ark. 36, 593 S.W.3d 1 (2020).

CHAPTER 9

INITIATIVES, REFERENDA, AND CONSTITUTIONAL AMENDMENTS

SUBCHAPTER 1 — PETITION AND ELECTION PROCEDURE

Publisher's Notes. This Effective Dates note is being set out to reflect an update to the 2019 supplement pamphlet.

Effective Dates. Acts 2019, No. 376, § 14: Mar. 8, 2019. Emergency clause provided: "It is found and determined by the

General Assembly of the State of Arkansas that this act amends the process for circulating initiative petitions and referendum petitions; and that the provisions of this act should become effective immediately so that its provisions apply to all petitions circulated after the passage of the act to avoid confusion in petition circulation. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall be-

come effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto." The emergency clause for Acts 2019, No. 376 was held to be defective in *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403.

7-9-103. Signing of petition — Penalty for falsification — Notice of suspected forgery.

CASE NOTES

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was "to avoid confusion in petition circulation"; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Sur-*

gery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

7-9-104. Form of initiative petition — Sufficiency of signatures.

CASE NOTES

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was "to avoid confusion in petition circulation"; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Sur-*

gery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

7-9-107. Filing of original draft before circulation.**CASE NOTES****Effective Date of 2019 Amendment.**

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was “to avoid confusion in petition circulation”; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Sur-*

gery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376’s new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner’s referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

7-9-108. Procedure for circulation of petition.**CASE NOTES****Constitutionality.**

District court’s merits determination rested on the erroneous legal conclusion that the in-person signature and notarization requirements for initiative petitions were subject to strict scrutiny, but neither requirement violated the First Amendment; there had to be some effect on

communication of ideas associated with petition circulation, and the voters did not show the in-person notarization requirement had that effect, and having in-person canvassers was reasonable and non-discriminatory to prevent fraud and mistake. *Miller v. Thurston*, 967 F.3d 727 (8th Cir. 2020).

7-9-109. Form of verification — Penalty for false statement.**CASE NOTES****Effective Date of 2019 Amendment.**

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was “to avoid confusion in petition circulation”; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Sur-*

gery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376’s new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner’s referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

7-9-110. Designation of number and popular name.

CASE NOTES

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was “to avoid confusion in petition circulation”; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. Safe Sur-

gery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376’s new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner’s referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. Safe Surgery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

7-9-111. Determination of sufficiency of petition — Corrections.

CASE NOTES

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was “to avoid confusion in petition circulation”; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. Safe Sur-

gery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376’s new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner’s referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. Safe Surgery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

7-9-112. Right of review.

CASE NOTES

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was “to avoid confusion in petition circulation”; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. Safe Sur-

gery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376’s new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner’s referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. Safe Surgery Ark. v. Thurston, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

7-9-126. Count of signatures.**CASE NOTES****Effective Date of 2019 Amendment.**

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was “to avoid confusion in petition circulation”; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376’s new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner’s referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

Cited: *Arkansans for Healthy Eyes v. Thurston*, 2020 Ark. 270 (2020).

SUBCHAPTER 2 — LEGISLATIVE PROPOSAL OF CONSTITUTIONAL AMENDMENTS

Publisher’s Notes. This Effective Dates note is being set out to reflect an update to the 2019 supplement pamphlet.

Effective Dates. Acts 2019, No. 376, § 14: Mar. 8, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act amends the process for circulating initiative petitions and referendum petitions; and that the provisions of this act should become effective immediately so that its provisions apply to all petitions circulated after the passage of the act to avoid confusion in petition circulation. Therefore, an emergency is de-

clared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.” The emergency clause for Acts 2019, No. 376 was held to be defective in *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403.

7-9-205. Challenges to constitutional amendments proposed by the General Assembly.**CASE NOTES****ANALYSIS**

Ballot Title Challenges.
Effective Date.

Ballot Title Challenges.

Ark. Const., Art. 19, § 22, governed the ballot titles of two ballot issues concerning term limits as nothing in the plain language of Acts 2019, No. 376, which en-

acted this section, expressly stated that a constitutional amendment proposed by the General Assembly had to be reviewed under Ark. Const., Art. 5, § 1 (“Amendment 7”). *Steele v. Thurston*, 2020 Ark. 320, 609 S.W.3d 357 (2020).

Effective Date.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was

“to avoid confusion in petition circulation”; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

SUBCHAPTER 6 — PAID CANVASSERS

Publisher's Notes. This Effective Dates note is being set out to reflect an update to the 2019 supplement pamphlet.

Effective Dates. Acts 2019, No. 376, § 14: Mar. 8, 2019. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act amends the process for circulating initiative petitions and referendum petitions; and that the provisions of this act should become effective immediately so that its provisions apply to all petitions circulated after the passage of the act to avoid confusion in petition circulation. Therefore, an emergency is de-

clared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.” The emergency clause for Acts 2019, No. 376 was held to be defective in *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403.

7-9-601. Hiring and training of paid canvassers — Definition.

CASE NOTES

ANALYSIS

Background Checks on Canvassers.
Compliance.
Effective Date of 2019 Amendment.

Background Checks on Canvassers.

Petition sponsors were not entitled to a preliminary and permanent injunction requiring the Secretary of State to count the subject petitions' signatures and provide a “cure period” of at least 30 days because the petitions were insufficient; the sponsors did not comply with the statutory requirements when they failed to certify that their paid canvassers had passed criminal background checks — state or federal. *Miller v. Thurston*, 2020 Ark. 267, 605 S.W.3d 255 (2020).

Compliance.

Certification language of a ballot-question committee, under which signatures were counted by the Secretary of State as valid, failed to certify that the paid canvassers had passed a criminal background check. Thus, under a strict compliance analysis, the ballot-question committee's statewide initiative petition was insufficient as it did not comply with the statutory requirements. *Arkansans for Healthy Eyes v. Thurston*, 2020 Ark. 270 (2020).

Effective Date of 2019 Amendment.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was “to avoid confusion in petition circulation”; Act 376 added additional requirements for getting a referendum on the

election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15 months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019,

No. 376 was ineffective and Act 376's new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner's referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

CHAPTER 10

NONPARTISAN ELECTIONS

7-10-103. Filing as a candidate.

CASE NOTES

Remedies.

Although, contrary to this section, an appointed district court judge who had filed as a candidate for the Court of Appeals erroneously used the title "Judge" in her signature of the political practices pledge, this section did not restrict courts

from ordering a change on the ballot and current law only sanctioned those who did not sign the pledge; there was no penalty for those found to have included inaccurate information on the pledge. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

TITLE 8

ENVIRONMENTAL LAW

CHAPTER 4

ARKANSAS WATER AND AIR POLLUTION CONTROL ACT

SUBCHAPTER 2 — WATER POLLUTION

8-4-203. Permits generally — Definitions.

A.C.R.C. Notes. Acts 2020, No. 89, § 50, provided: "TRUST FUND CONTRIBUTION FEES.

"(a) For purposes of collecting trust fund contribution fees under § 8-4-203(b), the Arkansas Department of Environmen-

tal Quality shall treat a public facilities boards and public water authorities as municipal systems.

"(b) This section expires on June 30, 2021."

CHAPTER 6

DISPOSAL OF SOLID WASTES AND OTHER REFUSE

SUBCHAPTER 7 — REGIONAL SOLID WASTE MANAGEMENT DISTRICTS AND
BOARDS

8-6-714. Rents, fees, and charges.

CASE NOTES

Division of Fees Between Districts.

Circuit court erred in applying the doctrine of unjust enrichment to award one regional solid-waste management district all of the waste-assessment service fees in a dispute with a neighboring district where the districts did not currently have an interlocal agreement that addressed

the division of fees and subdivision (c)(3) of this section provided a default rule that the districts were to equally divide the fees if they could not reach agreement. *Boston Mt. Reg'l Solid Waste Mgmt. Dist. v. Benton Cty. Reg'l Solid Waste Mgmt. Dist.*, 2019 Ark. App. 488, 587 S.W.3d 292 (2019).

TITLE 9

FAMILY LAW

SUBTITLE 2. DOMESTIC RELATIONS

CHAPTER 9

ADOPTION

SUBCHAPTER 2 — REVISED UNIFORM ADOPTION ACT

9-9-206. Persons required to consent to adoption — Consideration for relinquishing minor for adoption.

CASE NOTES

ANALYSIS

Parents.
—Father.

Parents.
—Father.

Consent of the putative teenage father was required for the adoption of the child because the circuit court's findings that the father established the requisite rela-

tionship and that the proposed adoptive parents failed to prove that the putative father's consent was not required were not clearly erroneous. Furthermore, the circuit court's finding that the biological mother thwarted the putative father's efforts to establish a significant custodial, personal, or financial relationship after a period of time was not clearly erroneous. *Noble v. Mayes*, 2020 Ark. App. 517 (2020).

9-9-207. Persons as to whom consent not required.**CASE NOTES****ANALYSIS**

Consent Required.

Failure to Communicate or Support.

—Time Period.

Consent Required.

Circuit court erred in granting a step-father's petition to adopt and in finding that the biological father's consent was not required because the father's failure to provide financial support or communicate with his children for more than one year after he and the mother were divorced was legally justified given the circumstances that the mother purposely concealed the location of the children's residences in three states for five years, eliminated the father's ability to contact the children by telephone, changed her and the children's last names, and the California divorce judgment did not obligate the father to pay child support. *French v. Hoelzeman*, 2020 Ark. App. 543 (2020).

Father's consent was required for the adoption of a child because the child's maternal grandparents, who wished to adopt the child, failed to prove by clear

and convincing evidence that the father had willfully or intentionally failed to provide meaningful support for the child for a period in excess of one year. The circuit court found that the father provided money and goods for the child by giving them to the child's mother for certain months and that the money and goods provided were significant and meaningful during the time frame. *Bryan v. Findley* (In re KAB), 2021 Ark. App. 24 (2021).

Failure to Communicate or Support.

—Time Period.

When the original divorce decree explicitly relieved the father of the duty to pay child support, the father's obligation to pay child support began to run when the court later ordered the father's obligation to pay child support to commence. Accordingly, the father's failure to provide support before that time could not be used against the father to obtain a stepparent adoption of the father's children without the father's consent because the mandated one-year period had yet to expire before the adoption petition was filed. *Plymale v. Rogers*, 2020 Ark. App. 568 (2020).

CHAPTER 12**DIVORCE AND ANNULMENT****SUBCHAPTER 3 — ACTIONS FOR DIVORCE OR ALIMONY****9-12-301. Grounds for divorce.****CASE NOTES**

Cruelty.

Circuit court properly found that the husband proved and corroborated the ground of cruel and barbarous treatment for the parties' divorce because there was testimony that the wife intentionally changed the access code to the marital

residence, removed the spare key, and then left the home with the husband's oxygen and medications inside, and what he had with him the day he was locked out of the marital home was insufficient for his needs. *Neidhardt v. Neidhardt*, 2020 Ark. App. 521 (2020).

9-12-315. Division of property — Definition.

CASE NOTES

ANALYSIS

- Property.
- Business.
- Marital Home.
- Unequal Division.
- In General.

Property.

—Business.

Given the conflicting testimony as to the value and assets of a business, especially the testimony of an accountant that the business was failing, and the circuit court's compliance with subdivision (a)(4) of this section, the entire business was properly awarded to the husband. *Chandler v. Chandler*, 2021 Ark. App. 42 (2021).

—Marital Home.

Circuit court did not err when it refused to grant the husband an unequal distribu-

tion of the marital residence because the wife's counsel described the marital home as property held as tenants by the entirety with no objection from the husband; thus, the circuit court correctly applied the presumption pertaining to property held as tenants by the entirety and correctly found that neither party had overcome that presumption by clear and convincing evidence. *McKinnis v. McKinnis*, 2020 Ark. App. 479, 612 S.W.3d 730 (2020).

Unequal Division.

—In General.

Circuit court did not err in dividing the marital property unequally because it made the required acknowledgement of its unequal distribution of the property, and properly based the decision on the statutory factors. *Neidhardt v. Neidhardt*, 2020 Ark. App. 521 (2020).

CHAPTER 13

CHILD CUSTODY AND VISITATION

SUBCHAPTER 1 — GENERAL PROVISIONS

9-13-101. Award of custody — Definition.

CASE NOTES

ANALYSIS

- Child's Best Interest.
- Joint Custody.
- Modification.

Child's Best Interest.

Trial court properly denied a father's motion to modify custody of his child because there was no dispute that the move to the county where the father lived was in the child's best interest, the trial court applied the correct analysis in finding that the mother's relocation was a change, but that it was not a change sufficiently material to warrant modifying custody, the possibility of joint custody was not a new circumstance, and the mother should not risk losing sole custody of the child when

she moved closer in proximity to the father. *Ingle v. Dacus*, 2020 Ark. App. 490 (2020).

Joint Custody.

Awarding joint custody was not error given the parties' conflicting testimony and that the discord between the parties was far less than in other cases awarding joint custody. *Chandler v. Chandler*, 2021 Ark. App. 42 (2021).

Modification.

Circuit court did not err in finding that a material change in circumstances had taken place after the agreed child custody order and that it was in the child's best interest for the father to have full physical and legal custody of the child because the mother became unwilling to facilitate visi-

tation with the father when he returned from his deployment; she exclusively blamed the father for the child's behavior; the mother's life partner stated that she had placed handcuffs on the five-year-old child; and, although the mother agreed

that handcuffing the child was inappropriate, she argued that it was reasonable for her partner to discipline the child in some manner for her suspension from school. *Faulkner v. McCain*, 2020 Ark. App. 541 (2020).

CHAPTER 14

SPOUSAL AND CHILD SUPPORT

SUBCHAPTER 1 — GENERAL PROVISIONS

9-14-107. Change in payor income warranting modification — Definition.

CASE NOTES

Change of Circumstances Found.

Trial court clearly erred in not finding a material change in circumstances when an increase in the father's monthly VA benefits from the entry of the prior child

support order to the 2019 hearing and subsequent order far exceeded \$100. *State Office of Child Support Enf't v. Wells*, 2020 Ark. App. 512, 612 S.W.3d 761 (2020).

SUBTITLE 3. MINORS

CHAPTER 27

JUVENILE COURTS AND PROCEEDINGS

SUBCHAPTER 3 — ARKANSAS JUVENILE CODE

9-27-303. Definitions.

CASE NOTES

ANALYSIS

Dependent-Neglected Juvenile.
Parent.

Dependent-Neglected Juvenile.

There was sufficient evidence from which to conclude that the children were dependent-neglected where one child was, *inter alia*, severely autistic, nonverbal, and would sneak out of the house, and the measures the mother took to prevent her escape were not successful; moreover, the mother had six other children, one or more with medical issues including seizures and asthma, and her housing was unstable and not an environment suitable for children with underlying health condi-

tions. *Johnson v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 513, 611 S.W.3d 240 (2020).

Parent.

In a termination of parental rights case, the circuit court did not err in finding that appellant was the child's father because appellant's DNA results confirming him as the child's biological father were introduced at the May 1, 2019, review hearing; he had participated in services through the Department of Human Services, had been present at every hearing, and was allowed to testify, question witnesses, and participate in the case; and he was appointed parent counsel to represent his legal interests for the termination hear-

ing. *Johnson v. Ark. Dep’t of Human Servs.*, 2020 Ark. App. 533 (2020).

9-27-329. Disposition hearing.

CASE NOTES

ANALYSIS

Least Restrictive Disposition.
Placement With Relatives.

Least Restrictive Disposition.

Circuit court chose the least restrictive plan consistent with the best interest of the children where the children had been in foster care for 16 months at the time of the termination hearing and it was in the children’s best interest to work toward permanency rather than allow more time for the father to begin completing the case plan. Moreover, the children’s need for permanency outweighed the father’s request for time to complete the case plan, especially since he was still incarcerated. *Honeycutt v. Ark. Dep’t of Human Servs.*, 2021 Ark. App. 6 (2021).

Placement With Relatives.

Trial court did not clearly err when it determined that termination of parental

rights was in the children’s best interest; although the children were temporarily placed in the care of their great-aunt and great-uncle, the great-aunt was noncommittal when asked whether she would consider permanent custody in lieu of termination and adoption. *Best v. Ark. Dep’t of Human Servs.*, 2020 Ark. App. 485 (2020).

Circuit court clearly erred by failing to consider placement with the paternal grandmother as a less restrictive alternative to termination; the circuit court made no mention of the grandmother’s request for placement and once the court terminated the father’s parental rights, no relative preference could be given to her. *Borah v. Ark. Dep’t of Human Servs.*, 2020 Ark. App. 491, 612 S.W.3d 749 (2020).

9-27-341. Termination of parental rights — Definition.

CASE NOTES

ANALYSIS

Best Interest of Juvenile.
Father.
Indian Child Welfare Act.
Placement With Relatives.
Potential Harm.
Subsequent Factors.
Termination Proper.

Best Interest of Juvenile.

Sufficient evidence supported the circuit court’s finding that termination of parental rights was in the children’s best

interest where the father was represented by counsel for 15 months and had been informed by the Department of Human Services (DHS) what he would need to do to gain custody of his children, DHS provided him with telephone visitation, which he ceased exercising, he never came to Arkansas to see his children during the case and had never met his son in person, and he failed to provide stable, suitable, and sufficient income and housing to properly care for the children. *Louissaint v. Ark. Dep’t of Human Servs.*, 2020 Ark. App. 494 (2020).

Father.

In a termination of parental rights case, the circuit court did not err in finding that appellant was the child's father because appellant's DNA results confirming him as the child's biological father were introduced at the May 1, 2019, review hearing; he had participated in services through the Department of Human Services, had been present at every hearing, and was allowed to testify, question witnesses, and participate in the case; and he was appointed parent counsel to represent his legal interests for the termination hearing. *Johnson v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 533 (2020).

Indian Child Welfare Act.

No party appealed the circuit court's findings in the adjudication order that the Indian Child Welfare Act did not apply or that neither the mother nor the child were members of an Indian tribe, and thus the issue was not preserved for review in the appeal of the termination of parental rights. A parent's failure to appeal rulings made in an adjudication order precludes appellate review of those findings in an appeal from a subsequent order. *Borah v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 491, 612 S.W.3d 749 (2020).

Placement With Relatives.

Trial court did not clearly err when it determined that termination of parental rights was in the children's best interest; although the children were temporarily placed in the care of their great-aunt and great-uncle, the great-aunt was noncommittal when asked whether she would consider permanent custody in lieu of termination and adoption. *Best v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 485 (2020).

Circuit court clearly erred by failing to consider placement with the paternal grandmother as a less restrictive alternative to termination; the circuit court made

no mention of the grandmother's request for placement and once the court terminated the father's parental rights, no relative preference could be given to her. *Borah v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 491, 612 S.W.3d 749 (2020).

Potential Harm.

Father's challenge to the potential harm prong of the circuit court's best-interest finding was rejected where his assertion that he could be ready to parent the children in the same amount of time that the adoption process took place was contingent on his release from prison, completion of the case plan, and obtaining a safe home for the children. The need for permanency outweighed the father's request for more time. *Honeycutt v. Ark. Dep't of Human Servs.*, 2021 Ark. App. 6 (2021).

Subsequent Factors.

Termination of the father's parental rights was proper under the subsequent-factors ground and in the child's best interests because he failed to comply with the circuit court's orders to attend and complete parenting classes and continued to use drugs; and his continued drug use throughout the case was indisputable evidence of potential harm. *Johnson v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 533 (2020).

Termination Proper.

Termination of parental rights upheld. *Martinez v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 484, 611 S.W.3d 225 (2020); *Baker v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 507 (2020).

Termination of parental rights upheld (no-merit brief). *Snider v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 502, 612 S.W.3d 199 (2020); *Snider v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 508 (2020); *Hendrickson v. Ark. Dep't of Human Servs.*, 2020 Ark. App. 519 (2020).

TITLE 10
GENERAL ASSEMBLY
CHAPTER 2
LEGISLATIVE PROCEEDINGS
SUBCHAPTER 1 — GENERAL PROVISIONS

10-2-123. Institute of Legislative Procedure.

A.C.R.C. Notes. Acts 2020, No. 1, § 9, provided: “LEGISLATIVE INSTITUTE. Members of the preceding General Assembly and the newly elected members of the House of Representatives and Senate shall be eligible to attend the biennial Institute of Legislative Procedure and shall be entitled, upon filing claim there-

fore, to per diem in the amount fixed by law for members of the General Assembly to receive for attendance at Legislative sessions, for each day in attending the biennial Institute of Legislative Procedure plus mileage for traveling from their place of residence to the biennial Institute of Legislative Procedure and return.”

TITLE 11
LABOR AND INDUSTRIAL RELATIONS
CHAPTER 4
WAGE AND HOUR REGULATION GENERALLY

SUBCHAPTER 2 — MINIMUM WAGE LAW

11-4-211. Overtime.

CASE NOTES

Work.

Circuit court properly granted class certification under the commonality, predominance, and superiority requirements of Ark. R. Civ. P. 23 to the employees in their action alleging that the employer failed to pay them for time spent changing into (donning) and out of (doffing) protective equipment because donning and doff-

ing constituted work under the Minimum Wage Law, the employer required all hourly employees to wear a similar uniform regardless of position or department, and the employer’s policy required each employee to arrive at the workstation fully dressed and leave fully dressed. *Koppers, Inc. v. Trotter*, 2020 Ark. 354 (2020).

11-4-218. Employee's remedies.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Liz Harris, Note: Mandatory-Workplace Donning and Doffing—All in a Day's Work: A Review of

Gerber Products Co. v. Hewitt, 40 U. Ark. Little Rock L. Rev. 428 (2018).

CASE NOTES**Arbitration.**

In employees' class action alleging violations of the Minimum Wage Law, § 11-4-201 et seq., where the employer moved to compel arbitration, the provision of this section that exhaustion of administrative remedies is not required was inapplicable to the arbitration agreements the em-

ployer executed with its employees because administrative agencies, not private parties, establish administrative remedies; the employees' argument that the arbitration agreements violated subdivision (e)(3)(B) of this section also failed. *BHC Pinnacle Pointe Hosp., LLC v. Nelson*, 2020 Ark. 70, 594 S.W.3d 62 (2020).

CHAPTER 9**WORKERS' COMPENSATION****SUBCHAPTER 1 — GENERAL PROVISIONS****11-9-102. Definitions.****CASE NOTES****ANALYSIS**

Healing Period.

Injury.

—Aggravation.

—Arising Out of and in the Course of Employment.

—Causal Connection Not Shown.

—Evidence.

—Intoxicants.

—Not Shown.

—Preexisting Infirmary.

—Specific Incident.

—Work-Related.

Objective Findings.

—Hearing Loss.

Healing Period.

Temporary total disability benefits beyond a specific date were properly denied given evidence that the claimant's healing period for his compensable cervical and thoracic strains ended on the date that a physician opined that he had reached maximum medical improvement and the lack of evidence linking the claimant's

syrinx to his compensable injury. Page v. Southwestern Bell Tel. Company/AT&T, Inc., 2019 Ark. App. 521, 590 S.W.3d 740 (2019).

Workers' Compensation Commission's decision denying a claimant's request for additional temporary total disability benefits was supported by substantial evidence where three medical opinions that his cervicothoracic syrinx was not causally related to his work-related motor vehicle accident conflicted with a fourth physician's report, and the Commission had accepted the medical opinions finding no causal relationship. Page v. Southwestern Bell Tel. Company/AT&T, Inc., 2019 Ark. App. 521, 590 S.W.3d 740 (2019).

Injury.**—Aggravation.**

Workers' Compensation Commission properly found that an employee sustained a new compensable injury and was entitled to temporary total disability benefits and attorney's fees after he felt abrupt, excruciating pain as he stepped

down from an excavator and required help to take him to a hospital; while the employee had preexisting chronic back pain, a new MRI showed, and two doctors stated, that the employee's spine had new and/or different injuries. *Greene Cty. Judge v. Penny*, 2019 Ark. App. 552, 589 S.W.3d 478 (2019).

Employment circumstances that aggravate preexisting conditions are compensable; an aggravation is a new injury resulting from an independent incident and must be evidenced by objective medical findings of a new injury to the preexisting condition. *Greene Cty. Judge v. Penny*, 2019 Ark. App. 552, 589 S.W.3d 478 (2019).

—Arising Out of and in the Course of Employment.

Substantial evidence supported the Workers' Compensation Commission's decision that a housekeeper failed to establish a compensable injury because she was not performing employment services at the time of the accident; substantial evidence supported the Commission's finding that the housekeeper was on her way to lunch when she fell in the lobby because she told the human resources office immediately following the incident that she fell when she was going to lunch and both the human resources officer and the housekeeping supervisor testified that the housekeeper was walking toward the front door when she fell. *Rodriguez-Gonzalez v. Jamestown Health & Rehab, LLC*, 2019 Ark. App. 530, 589 S.W.3d 408 (2019).

Workers' Compensation Commission did not err in finding that the claimant was performing employment services at the time she was injured because she testified that during her break she remained on duty and in the building, she was clocked in, and she remained on call and available to work; she testified that she was the only unit coordinator on her shift and that if she had been called to return to her desk based on an emergency or a trauma, she would have been required to do so; she stated that she had been called back three or four times in the past; and the employer derived a benefit from the claimant's remaining in the building, immediately available to resume her duties. *Univ. of Ark. for Med. Scis. v. Hines*, 2019 Ark. App. 557, 590 S.W.3d 183 (2019).

—Causal Connection Not Shown.

Workers' Compensation Commission properly affirmed and adopted the findings of fact and conclusions of law made by an administrative law judge that an employee did not sustain the cervical injury in the same accident that caused a hairline fracture to her sternum because the employee did not convey any problems with her neck for two weeks, the initial medical records affirmatively indicated that there were no problems with her neck, and it could not be said that fair-minded persons with the same facts before them could not have reached the conclusions of the Commission. *Bledsoe v. Viskase Cos.*, 2020 Ark. App. 53, 593 S.W.3d 512 (2020).

—Evidence.

Employee sustained a compensable injury to his neck when moving a desk, as there was a significant change in his condition following the work accident; his prior neck injury had not limited his activities following his military discharge, and the evidence showed a current herniated disc with spinal bleeding, indicative of an acute injury. *Ark. Dep't of Health v. Lockhart*, 2020 Ark. App. 166, 594 S.W.3d 924 (2020).

—Intoxicants.

Appellate court affirmed the Workers' Compensation Commission's decision denying an employee's claim for benefits based on his failure to rebut the statutory presumption that the accident was substantially occasioned by alcohol; although witnesses testified that there was no indication that the employee was intoxicated, the employee's blood tested positive for alcohol at the hospital on the morning of his one-car accident, which had occurred while he was driving to the airport to travel to meet with an out-of-state customer, and a physician/toxicologist, who testified as an expert witness, opined that alcohol contributed significantly to the cause of the accident. *Papageorge v. Tyson Shared Servs.*, 2019 Ark. App. 603, 590 S.W.3d 800 (2019).

Denial of benefits to a claimant was appropriate because the Workers' Compensation Commission found that the claimant failed to rebut the presumption that her injury was substantially occasioned by the use of illegal drugs when she

severed part of her finger while using a cutting machine and tested positive for marijuana metabolites immediately after the accidental injury. The claimant, who had been at the job only five days when injured, offered no evidence except her self-serving testimony as to how and whether she was trained by the employer. *Blair v. Am. Stitchco, Inc.*, 2020 Ark. App. 38, 593 S.W.3d 44 (2020).

Claimant, who tested positive for marijuana, failed to rebut the statutory presumption that his work-related injury was substantially occasioned by the use of illegal drugs; further, the Workers' Compensation Commission made express findings regarding the credibility of the witnesses and it is not the role of the appellate court to reweigh the evidence. *Allen v. Employbridge Holding Co.*, 2020 Ark. App. 127, 594 S.W.3d 165 (2020).

—Not Shown.

Substantial evidence supported the Workers' Compensation Commission's decision to deny benefits to a pro se claimant because medical records revealed that, for years before the claimant's fall at work, the claimant suffered from the physical symptoms that she alleged were the result of the injury at work. Furthermore, there was no post-accident medical evidence to establish any of the claimant's alleged injuries with objective findings as required. *Marshall v. Ark. Dep't of Corr.*, 2020 Ark. App. 112, 594 S.W.3d 160 (2020).

—Preexisting Infirmary.

Substantial evidence supported the Workers' Compensation Commission's finding that the claimant failed to prove that she suffered a compensable neck injury where she answered no when the ALJ specifically asked her whether she felt anything in her neck when she was climbing the ladder and her back popped, she did not report a neck injury on the date of the incident to her employer or doctor, her neck exam revealed no abnormalities, a doctor opined that the claimant's neck and arm complaints were not work-related, and it was undisputed that she suffered from a significant preexisting neck injury. *Willis v. Ark. Dep't of Corr.*, 2021 Ark. App. 50 (2021).

—Specific Incident.

Workers' Compensation Commission did not err in awarding benefits to an

employee arising out of a motor vehicle accident because the issue of whether the driver of the other vehicle was traveling 30 miles an hour at the time of the accident and rear-ended the employee at a stop light or instead the employee backed into the other driver was one of credibility and weight to be accorded to the evidence. *Sears Roebuck & Co. v. Brown*, 2020 Ark. App. 93, 594 S.W.3d 896 (2020).

—Work-Related.

Workers' Compensation Commission did not err in concluding that the claimant's right shoulder injury was compensable because the claimant's failure to immediately report an injury or provide corroboration regarding the incident was not fatal to her claim as the administrative law judge and the Commission apparently found her to be a credible witness; while the emergency room records did not reflect that the claimant reported her injury being work-related, the claimant testified that she did inform hospital personnel of that fact; and the fact that the family physician's notes did not state that the injury was work-related was immaterial as those notes did not include any remarks regarding how the injury occurred. *M.A. Mortenson Cos. v. Reed*, 2019 Ark. App. 569, 589 S.W.3d 487 (2019).

Objective Findings.

Although compensable injuries must be established by medical evidence supported by objective findings, and complaints of pain are not objective medical findings as objective findings are those that cannot come under the voluntary control of the patient, a claimant who has sustained a compensable injury is not required to offer objective medical evidence to prove entitlement to additional benefits. *Macsteel v. Hindmarsh*, 2019 Ark. App. 458, 588 S.W.3d 53 (2019).

There was a substantial basis for denying an employee's whole-hand/wrist and permanent impairment claims because (1) the administrative law judge (ALJ) found that the employee lacked credibility, (2) aside from an MRI report supporting the compensated thumb injury, the ALJ concluded that there were no objective medical findings of a hand injury attributable to the work injury and no impairment reports aside from an active range-of-motion evaluation, which was given little

weight, and (3) swelling in the hand was slight and attributed to the effects of wearing an elastic hand brace. *Evans v. Firestone Bldg. Prods.*, 2020 Ark. App. 80, 594 S.W.3d 139 (2020).

—Hearing Loss.

Workers' Compensation Commission properly found that an employee sustained a compensable binaural hearing-loss injury and awarded benefits; although the employee testified that he initially thought his hearing loss was only

in his right ear and he reported a sensation of "fullness" in that ear, the medical evidence demonstrated that he suffered hearing loss in both ears, the two hearing tests were consistent in revealing that the employee had binaural hearing loss, and the employer and insurer did not demonstrate that subdivision (16)(A)(iii) of this section required the results of audiology tests to be adjusted for presbycusis in all cases. *Craighead Cty. v. Tipton*, 2020 Ark. App. 416 (2020).

11-9-105. Remedies exclusive — Exception.

CASE NOTES

ANALYSIS

Constitutionality.

Employer.

Immunity.

Third-Party Tortfeasors.

—Co-Workers.

Constitutionality.

General Assembly validly exercised its constitutionally granted authority when crafting subsection (a) of this section to include "stockholders" and "principals" as "employers" for purposes of the exclusive remedy provision. *Myers v. Yamato Kogyo Co.*, 2020 Ark. 135, 597 S.W.3d 613 (2020).

Workers' Compensation Commission's conclusion that the parent companies of the direct employer were statutory employers as principals and stockholders of the direct employer was supported by substantial evidence. Accordingly, subsection (a) of this section was constitutional as applied because the parent companies had an employment relationship with the deceased employee. *Myers v. Yamato Kogyo Co.*, 2020 Ark. 135, 597 S.W.3d 613 (2020).

Employer.

As used in the first sentence of subsection (a) of this section, the phrase "acting in his or her capacity as an employer" modifies only "partner", the antecedent immediately preceding it. *Myers v. Yamato Kogyo Co.*, 2020 Ark. 135, 597 S.W.3d 613 (2020).

As used in subsection (a) of this section, the qualifying phrase "acting in his or her capacity as an employer" does not modify "principal, officer, director, or stockholder"

in the first sentence. Instead, the statute directs courts to consider only whether a partner is acting in their capacity as an employer. *Myers v. Yamato Kogyo Co.*, 2020 Ark. 135, 597 S.W.3d 613 (2020).

Parties' stipulations as to the corporate structure of the employer provided evidence supporting the conclusion that the parent companies were principals and stockholders of the employer, and thus the immunity provision of subsection (a) of this section applied to the parent companies. Moreover, plaintiff did not allege that the parent companies had a status so completely independent from, and unrelated to, their status as principals and stockholders that would place the claims outside the normal employment context. *Myers v. Yamato Kogyo Co.*, 2020 Ark. 135, 597 S.W.3d 613 (2020).

Immunity.

In employee's products liability action against the manufacturer of the product that injured him while he was working, the circuit court properly precluded the manufacturer's attempt to allocate fault to the nonparty employer in its amended answer; because the employer was clothed with immunity from liability in tort under the exclusive-remedy provision of the workers' compensation statutes, the employer could not have joint or several "liability" in tort and therefore did not meet the definition of "joint tortfeasor" in the Uniform Contribution Among Tortfeasors Act, § 16-61-201 et seq., or fall within the confines of that act. *Indus. Iron Works, Inc. v. Hodge*, 2020 Ark. App. 56, 595 S.W.3d 9 (2020).

The Uniform Contribution Among Tortfeasors Act, § 16-61-201 et seq., does not allow for the apportionment of fault to an immune nonparty employer. *Indus. Iron Works, Inc. v. Hodge*, 2020 Ark. App. 56, 595 S.W.3d 9 (2020).

The language of § 16-55-201 is clear; it speaks in terms of the allocation of fault among the “defendants” to the action but is silent as to the allocation of nonparty fault. Instead, the Uniform Contribution Among Tortfeasors Act, § 16-61-201 et seq., addresses the allocation of nonparty fault. *Indus. Iron Works, Inc. v. Hodge*, 2020 Ark. App. 56, 595 S.W.3d 9 (2020).

Third-Party Tortfeasors.

—Co-Workers.

Substantial evidence supported the decision that the driver was immune from suit given judicial precedent affirming immunity to a co-employee when the employee received workers’ compensation benefits from the employer. Moreover, there was no definitive testimony that the driver had made a detour to purchase food. *Moore v. Bestway Rent to Own*, 2021 Ark. App. 41 (2021).

SUBCHAPTER 5 — ACCIDENTAL INJURY OR DEATH

11-9-508. Medical services and supplies — Liability of employer — Definition.

CASE NOTES

ANALYSIS

Additional Benefits.

Additional Benefits Denied.

Benefits Awarded.

Reasonably Necessary Treatment.

Additional Benefits.

Although compensable injuries must be established by medical evidence supported by objective findings, and complaints of pain are not objective medical findings as objective findings are those that cannot come under the voluntary control of the patient, a claimant who has sustained a compensable injury is not required to offer objective medical evidence to prove entitlement to additional benefits. *Macsteel v. Hindmarsh*, 2019 Ark. App. 458, 588 S.W.3d 53 (2019).

Substantial evidence supported the Workers’ Compensation Commission’s decision that a claimant was entitled to additional medical treatment in the form of surgery; although the Commission was confronted with competing and differing medical opinions from multiple doctors, the Commission weighed the evidence, gave greater credibility to the opinion of the only doctor who actually examined the claimant, and concluded from the evidence before it that the requested surgery was reasonable and necessary. *Macsteel v.*

Hindmarsh, 2019 Ark. App. 458, 588 S.W.3d 53 (2019).

Award of ongoing pain management was affirmed where the parties stipulated that the claimant had sustained a compensable lower-back injury, and her credible testimony, together with the medical records documenting a worsening of symptoms, was sufficient to prove a causal connection between the claimant’s continued need for treatment and the work-related injury. *Univ. of Cent. Ark. v. Srite*, 2019 Ark. App. 511, 588 S.W.3d 849 (2019).

Additional Benefits Denied.

Workers’ Compensation Commission’s decision denying a claimant’s request for additional temporary total disability benefits was supported by substantial evidence where three medical opinions that his cervicothoracic syrinx was not causally related to his work-related motor vehicle accident conflicted with a fourth physician’s report, and the Commission had accepted the medical opinions finding no causal relationship. *Page v. Southwestern Bell Tel. Company/AT&T, Inc.*, 2019 Ark. App. 521, 590 S.W.3d 740 (2019).

Workers’ Compensation Commission did not err in refusing to award the claimant additional medical benefits; although claimant argued that his current back problems were a continuation of the minor

back injury sustained on May 31, 2018, he managed to work for at least six separate temporary agencies between June 2018 and March 2019 performing labor-intensive tasks; he performed the necessary job duties with no work restrictions; and he indicated in separate applications for unemployment benefits that he had no disabilities that would prevent him from performing normal job duties. *Potter v. Kelly Servs.*, 2020 Ark. App. 444, 610 S.W.3d 670 (2020).

Benefits Awarded.

Workers' Compensation Commission did not err in awarding claimant medical treatment and temporary total disability as causally connected to the primary work-related back injury; the Commission did not impermissibly shift any burden of proof, the Commission did not erroneously consider a doctor's opinion on causation and a nurse practitioner's report as probative evidence, and the Commission found that the claimant's underlying condition had not yet been repaired following physical therapy so that maximum medical improvement had not been reached. *Searcy Sch. Dist. v. Allen*, 2020 Ark. App. 149, 594 S.W.3d 169 (2020).

Reasonably Necessary Treatment.

Workers' Compensation Commission did not err in finding the recommended

additional medical treatment for the claimant's compensable knee injury was reasonably necessary and in finding that the doctor's medical opinion was not based on any mistake of material fact; it was not unreasonable for the claimant to have forgotten a single incident when he received an injection in his knee two years before his compensable injury, three years before seeing the doctor, and four years before his deposition. The doctor was aware of preexisting degenerative changes and substantial medical evidence supported the Commission's finding that claimant proved the necessary causal connection between his injury and the need for a total knee replacement. *Tyson Poultry, Inc. v. Montelongo*, 2019 Ark. App. 535, 589 S.W.3d 449 (2019).

Claimant was entitled to pain management as a reasonably necessary medical treatment because the Workers' Compensation Commission was aware of the inconsistencies in the medical opinions of doctors, but gave more weight to one doctor's opinion and recommendation for the treatment, and the appellate court would not reweigh this determination. *Cent. Moloney, Inc. v. Holmes*, 2020 Ark. App. 359, 605 S.W.3d 266 (2020).

11-9-514. Medical services and supplies — Change of physician.

CASE NOTES

Appeal.

Employer's argument under this section concerning the claimant's failure to follow the statutory rules for a change of physician was not presented to the Workers'

Compensation Commission and thus was not preserved for appellate review. *Univ. of Cent. Ark. v. Srite*, 2019 Ark. App. 511, 588 S.W.3d 849 (2019).

11-9-521. Compensation for disability — Scheduled permanent injuries.

CASE NOTES

Temporary Total Disability.

Decision awarding a claimant tempo-

rary total disability (TTD) benefits was reversed and remanded where the admin-

istrative law judge (ALJ) clearly analyzed the claimant's entitlement to TTD benefits under § 11-9-526, it was undisputed that the claimant's injury was a scheduled injury, and neither the Workers' Compensa-

sation Commission nor the ALJ made any findings with regard to the requirements set forth in subsection (a) of this section. *City of Fort Smith v. Kaylor*, 2019 Ark. App. 517, 588 S.W.3d 803 (2019).

11-9-522. Compensation for disability — Unscheduled permanent partial disability.

CASE NOTES

ANALYSIS

Earning Capacity.

Evidence.

Offer of Employment.

Wage Earning Loss.

Earning Capacity.

Claimant was entitled to wage-loss disability because the Workers' Compensation Commission credited a doctor's opinion and considered the claimant's age and chronic pain, limited education, lack of transferable skills, and motivation to find employment. The Commission also considered the testimony of the claimant's vocational consultant that the claimant cooperated in efforts to find gainful employment within his restrictions. *Cent. Moloney, Inc. v. Holmes*, 2020 Ark. App. 359, 605 S.W.3d 266 (2020).

Evidence.

Workers' Compensation Commission's decision to award an injured employee an 11% impairment rating to his body as a whole and 10% in wage-loss disability was supported by substantial evidence; the Commission considered all the evidence and testimony presented, the decision was supported by objective medical findings, and the Commission clearly stated that it found a neurologist's conclusions to be supported by the record and that his conclusions were entitled to more evidentiary weight than the opinions of various other doctors. *Tempworks Mgmt. Servs. v. Jaynes*, 2020 Ark. App. 70, 593 S.W.3d 519 (2020).

Offer of Employment.

Workers' Compensation Commission erred in reversing an administrative law judge and in finding that an employee had not proved he was entitled to wage-loss disability in the amount of 60% because the evidence did not show that the employee was offered a job as statutorily required, the employer did not identify a specific job or the proposed duties of that job, and there was no evidence in the record to support the Commission's finding that the employer offered to employ the employee at wages equal to or greater than his average weekly wage at the time of the accident. *Calhoun v. Area Agency on Aging of Southeast Ark.*, 2020 Ark. App. 366, 607 S.W.3d 176 (2020), review granted, 2020 Ark. LEXIS 385 (Nov. 19, 2020).

Wage Earning Loss.

Although appellants contended that claimant, a network support engineer, was barred from wage-loss disability benefits as he chose to retire only a few hours after reporting to work, the Workers' Compensation Commission credited claimant's testimony that the ultimate reason for retiring was the increase in pain and the "dumbfoundedness" he experienced when back on the job and this testimony was corroborated; as it is the Commission's duty to weigh the evidence and not the appellate court, the Commission's decision that claimant was entitled to 50% wage-loss disability benefits was affirmed. *Ark. DOT v. Abercrombie*, 2019 Ark. App. 372, 584 S.W.3d 701 (2019).

11-9-526. Compensation for disability — Refusal of employee to accept employment.

CASE NOTES

ANALYSIS

Applicability.

Refusal of Employment.

Applicability.

Substantial evidence failed to support the Workers' Compensation Commission's finding that a truck driver employee failed to prove entitlement to temporary total disability benefits from December 21, 2017, to a date yet to be determined; although the employee had previously declined light-duty work within the restrictions for the knee strain, his family physician later totally restricted him from working due to the deep-vein-thrombosis injury. This section had no application because the employee was totally restricted from working and thus there was no work the employer could have offered

that would have accommodated the employee's off-work status. *Grant v. Westar Refrigerated Transp.*, 2020 Ark. App. 106, 594 S.W.3d 154 (2020).

No employment suitable to an employee's capacity is possible when an employee has been taken off work entirely. *Grant v. Westar Refrigerated Transp.*, 2020 Ark. App. 106, 594 S.W.3d 154 (2020).

Refusal of Employment.

Because the claimant was not on modified-duty work beyond the statutory waiting period, and the employer offered modified-duty work to him, but he chose to abandon his job and seek employment elsewhere, he was not entitled to temporary total disability benefits from June 4 to June 14, 2018, based upon his refusal. *Potter v. Kelly Servs.*, 2020 Ark. App. 444, 610 S.W.3d 670 (2020).

SUBCHAPTER 7 — PROCEEDINGS BEFORE WORKERS' COMPENSATION COMMISSION

11-9-702. Filing of claims.

CASE NOTES

ANALYSIS

Statute of Limitations.

—Additional Compensation.

—Tolling the Statute.

Statute of Limitations.

The Arkansas Supreme Court follows a strict-construction interpretation of this section. *White Cty. Judge v. Menser*, 2020 Ark. 140, 597 S.W.3d 640 (2020).

This section barred a claim for additional medical benefits where the claimant never formally filed a Form AR-C claim for compensation for additional benefits after his injury, and the ALJ's pre-hearing order did not contain the specific language required by subsection (c) of this section. *White Cty. Judge v. Menser*, 2020 Ark. 140, 597 S.W.3d 640 (2020).

—Additional Compensation.

Under a plain reading of subsection (b) of this section, a workers' compensation claimant's application for additional medical benefits was not time-barred where there was no authority for the employer unilaterally imposing a pre-authorization condition on the benefits it provided for a compensable injury, the Commission's findings that the authorized treating physician's continued treatment in 2017 for claimant's right leg pain was reasonable and necessary and was sufficiently related to her right knee injury were supported by substantial evidence, and the claimant filed an application for additional benefits within one year of the 2017 treatment. *Lavaca Sch. Dist. v. Hatfield*, 2019 Ark. App. 360, 584 S.W.3d 262 (2019).

—Tolling the Statute.

Letter that gave the commission claim number, referenced a denial of benefits, requested benefits, and asked for a hearing constituted a claim for benefits and tolled the statute of limitations; while it was not on a Commission-designated claim form (AR-C), there is no require-

ment in the Workers' Compensation Law that a claim for benefits be made on any particular form and the fact that there is no requirement to use a designated claim form indicates the legislature did not intend to create such a limitation. *Ark. Dep't of Health v. Lockhart*, 2020 Ark. App. 166, 594 S.W.3d 924 (2020).

11-9-704. Proceedings on claims.**CASE NOTES****ANALYSIS**

Evidence.

—Findings of Impairment.
“Physical Impairment”.

Evidence.

—Findings of Impairment.

Workers' Compensation Commission's decision to award an injured employee an 11% impairment rating to his body as a whole and 10% in wage-loss disability was supported by substantial evidence; the Commission considered all the evidence and testimony presented, the decision was supported by objective medical findings, and the Commission clearly stated that it

found a neurologist's conclusions to be supported by the record and that his conclusions were entitled to more evidentiary weight than the opinions of various other doctors. *Tempworks Mgmt. Servs. v. Jaynes*, 2020 Ark. App. 70, 593 S.W.3d 519 (2020).

“Physical Impairment”.

Substantial evidence supported the Workers' Compensation Commission's finding that the claimant failed to prove that she was entitled to permanent partial-disability benefits given her preexisting lumbar condition, and no physician had issued her an impairment rating. *Willis v. Ark. Dep't of Corr.*, 2021 Ark. App. 50 (2021).

11-9-715. Fees for legal services.**CASE NOTES****Authority to Award.**

In an action for workers' compensation insurance benefits, the trial court had the authority to award attorney's fees where the insurer refused to withdraw its lien after the settlement agreement had been finalized and did not request a made-whole hearing until after the claimant's

attorney filed a motion to dismiss the insurer from the lawsuit, causing the claimant to incur legal expenses to preserve the benefits he had been awarded and force the insurer to release its lien. *Liberty Mut. Ins. Co. v. Youngblood*, 2020 Ark. App. 398, 609 S.W.3d 468 (2020).

CHAPTER 10

DIVISION OF WORKFORCE SERVICES LAW

SUBCHAPTER 5 — BENEFITS GENERALLY

11-10-514. Disqualification — Discharge for misconduct.

CASE NOTES

ANALYSIS

- Misconduct.
- Misconduct Found.
- Not Shown.
- Safety Rules.

Misconduct.

—Misconduct Found.

Board of Review did not err in denying the claimant unemployment benefits as substantial evidence supported the board’s finding that the employer had proven the claimant committed an act of misconduct; although the claimant was upset after the assistant manager publicly berated him, the claimant failed to seek permission before leaving his job post for the day and the claimant intentionally violated the employer’s rules and disregarded its interests. *Lovins v. Dir., Dep’t of Workforce Servs.*, 2020 Ark. App. 472 (2020).

—Not Shown.

Board of Review erred in denying an employee’s claim for unemployment benefits based on misconduct in connection with the work because the employee’s conduct was not of such a degree or recurrence as to manifest culpability, wrongful intent, evil design, or an intentional or

substantial disregard of her employer’s interests or her duties and obligations; the evidence showed that the employee notified the employer that she could not work due to her illness and hospitalization, she remained hospitalized for over two months, was placed on a ventilator, and underwent a tracheotomy, the employer sent the employee the notification letters during her hospitalization, and the employee contacted the employer shortly after she had been discharged. *Dillinger v. Dir., Dep’t of Workforce Servs.*, 2020 Ark. App. 138, 596 S.W.3d 62 (2020).

—Safety Rules.

Substantial evidence existed to support the Board of Review’s finding that an employee willfully violated the rules or customs of the employer pertaining to safety where the employer conducted an extensive investigation, the employee admitted he was aware of and understood the company’s “lock out/tag out” safety policy, and the evidence showed that he did not follow the safety procedures before putting his arm in the stacker-stick-layer machine. Thus, the employee’s ineligibility for unemployment benefits under subdivision (b)(1) of this section was upheld. *Thomas v. Dir., Dep’t of Workforce Servs.*, 2019 Ark. App. 468, 587 S.W.3d 612 (2019).

11-10-519. Disqualification — Penalty for false statement or misrepresentation.

CASE NOTES

Evidence.

Unemployment compensation claimant’s disqualification was reversed as substantial evidence did not support the finding that his failure to report earnings information was willful; the employer reported earnings of \$38.78 for two weeks

that were itemized as “top of scale pay” and that were taken up by deductions and taxes such that claimant received nothing. He did not go to work, he did not receive a paycheck, and he did not get money directly deposited into a bank account, and he could not be found to have

willfully failed to disclose material facts before he knew those facts himself. *Klak v. Dir., Dep't of Workforce Servs.*, 2020 Ark. App. 117, 597 S.W.3d 86 (2020).

TITLE 12

LAW ENFORCEMENT, EMERGENCY MANAGEMENT, AND MILITARY AFFAIRS

SUBTITLE 5. EMERGENCY MANAGEMENT

CHAPTER.

- 75. ARKANSAS EMERGENCY SERVICES ACT OF 1973.
- 76. INTERSTATE COMPACTS.

SUBTITLE 2. LAW ENFORCEMENT AGENCIES AND PROGRAMS

CHAPTER 6

GENERAL PROVISIONS

SUBCHAPTER 6 — LOCAL CRIMINAL JUSTICE COORDINATING COMMITTEES

12-6-601. Local criminal justice coordinating committees.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Amie assembly, 40 U. Ark. Little Rock L. Rev. 305
Alexander & Sarah Giammo, Survey of (2017).
Legislation 2017: Arkansas General As-

CHAPTER 8

DIVISION OF ARKANSAS STATE POLICE

SUBCHAPTER 1 — GENERAL PROVISIONS

12-8-106. Division of Arkansas State Police — Duties and powers — Restrictions — Municipal police barred from patrolling certain highways.

CASE NOTES

Towing Rotation List.

Circuit court properly granted summary judgment to the Arkansas State Police (ASP) in an action by a towing company and an employee for injunctive and declaratory relief asserting that the ASP policy prohibiting individuals with felony convictions from placement on the

ASP Towing Rotation List was illegal under § 17-1-103. Plaintiffs' suit was barred by sovereign immunity, because § 17-1-103 did not apply to ASP, as ASP did not deal in licensing or regulating the occupation of towing within the meaning of § 17-1-103(f), as required for § 17-1-103 to apply; thus, plaintiffs failed to demon-

strate that the illegal-act exception to sovereign immunity applied. *Steve's Auto Ctr. of Conway, Inc. v. Ark. State Police*, 2020 Ark. 58, 592 S.W.3d 695 (2020).

CHAPTER 9

LAW ENFORCEMENT OFFICER TRAINING AND STANDARDS

SUBCHAPTER 1 — COMMISSION ON STANDARDS AND TRAINING

12-9-119. Behavioral health crisis intervention training.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Amie Alexander & Sarah Giammo, Survey of Legislation 2017: Arkansas General Assembly, 40 U. Ark. Little Rock L. Rev. 305 (2017).

CHAPTER 12

CRIME REPORTING AND INVESTIGATIONS

SUBCHAPTER 3 — STATE CRIME LABORATORY

12-12-313. Records as evidence — Analyst's testimony.

CASE NOTES

Right of Confrontation.
Even though the trial court violated defendant's right to confrontation under the Sixth Amendment by allowing a substitute analyst to testify regarding the results of a DNA test performed by another analyst, the error was harmless beyond a reasonable doubt; the victim's

vivid description of being raped repeatedly and painfully by defendant constituted sufficient evidence to sustain his convictions of rape and second-degree sexual assault. *Alejandro-Alvarez v. State*, 2019 Ark. App. 450, 587 S.W.3d 269 (2019).

SUBCHAPTER 9 — SEX OFFENDER REGISTRATION ACT OF 1997

12-12-903. Definitions.

CASE NOTES

Sex Offense.
Statutory amendment in 2003 to this section of the Sex Offender Registration Act applied retroactively to defendant who was convicted of fourth-degree sexual assault in 2002, as (1) it made no difference that his 2002 sentencing order did not order him to register as a sex offender;

(2) even though defendant had completed his sentence at the time of the statutory amendment, his suspended imposition of sentence was a form of community supervision under the Sex Offender Registration Act; and (3) he did not object on this basis when he pled guilty in 2015 to a registration violation and was ordered to

register. *Guyton v. State*, 2020 Ark. App. 273, 601 S.W.3d 440 (2020).

12-12-904. Failure to comply with registration and reporting requirements — Refusal to cooperate with assessment process.

CASE NOTES

Failure to Register or Report Found.

Circuit court did not err in finding that defendant violated the terms and conditions of his suspended imposition of sentence by committing the new offense of failing to register as a sex offender after he was released from incarceration; although defendant objected to the Arkan-

sas Crime Information Center documents when the documents were introduced, he did not raise the Confrontation Clause basis for objection until after the evidence had been introduced and the State had rested its case and therefore that argument was waived. *Allen v. State*, 2020 Ark. App. 84, 596 S.W.3d 518 (2020).

12-12-905. Applicability.

CASE NOTES

In General.

Statutory amendment in 2003 to the sex offender registration requirements applied retroactively to defendant who was convicted of fourth-degree sexual assault in 2002, as (1) it made no difference that his 2002 sentencing order did not order him to register as a sex offender; (2) even though defendant had completed his sentence at the time of the statutory amendment, his suspended imposition of sentence was a form of community supervision under the Sex Offender Registration Act; and (3) he did not object on this basis when he pled guilty in 2015 to a registration violation and was ordered to register. *Guyton v. State*, 2020 Ark. App. 273, 601 S.W.3d 440 (2020).

Given the purpose for requiring registration, suspended sentences should not be treated any differently than probation or parole; therefore, a suspended imposition of sentence is a form of community supervision under the Sex Offender Registration Act, § 12-12-901 et seq. *Guyton v. State*, 2020 Ark. App. 273, 601 S.W.3d 440 (2020).

Even if evidence of defendant's previous registrations as a sex offender and prior guilty plea was inadmissible, defendant

was not prejudiced by the trial court's admission of such evidence, and no reversible error occurred; defendant failed to comply with the requirements of the Sex Offender Registration Act, the offense was a strict-liability offense, and his failure to comply completed the offense. *Guyton v. State*, 2020 Ark. App. 273, 601 S.W.3d 440 (2020).

Where appellant's conviction and imprisonment for a sex offense in Colorado occurred before August 1, 1997, the date of applicability of the Arkansas sex offender registration statute, but the offense was subject to lifetime registration in Colorado, appellant was required to register as a sex offender in Arkansas under § 12-12-906(a)(2) because he would have been required to register as a sex offender in the jurisdiction (Colorado) in which he was adjudicated guilty of a sex offense. Section 12-12-906 contains no limitations with respect to when the sex offender was adjudicated guilty or required to register in the foreign jurisdiction, but makes clear that if the person is presently required to register in the foreign jurisdiction, he or she is required to register in Arkansas. *Stow v. Montgomery*, 2020 Ark. App. 310, 601 S.W.3d 146 (2020).

12-12-906. Duty to register or verify registration generally — Review of requirements with offenders.

CASE NOTES

ANALYSIS

Constitutionality.
Requirement to Register.

Constitutionality.

Where appellant's conviction and imprisonment for a sex offense in Colorado occurred before August 1, 1997, the date of applicability of the Arkansas sex offender registration statute, but the offense was subject to lifetime registration in Colorado, subdivision (a)(2)(B)(i) of this section did not violate the Due Process Clause as its requirements were definite in their terms. Specifically, the language of the statute was clear and was not so standardless that it invited arbitrary enforcement. *Stow v. Montgomery*, 2020 Ark. App. 310, 601 S.W.3d 146 (2020).

Subdivision (a)(2) of this section did not violate the Equal Protection Clause where sex offenders facing sex offender registration requirements were similarly situated for equal protection purposes; the registration requirement was not punitive, but was for public safety; by requiring sex offenders convicted in other states that were required to register there to also register in Arkansas, the legislature had left it to the other states to decide which of its sex offenders were at a high risk for reoffending and the need to protect the public from the offender; the statute discouraged sex offenders convicted in other states from forum shopping; and the state had a legitimate interest in protecting its citizens from sex offenders. *Stow v. Montgomery*, 2020 Ark. App. 310, 601 S.W.3d 146 (2020).

Subdivision (a)(2) of this section did not violate appellant's right to travel where it

did not prevent persons registered as sex offenders in other states from traveling to Arkansas nor becoming permanent residents of the state, any resident of Arkansas who was adjudicated of a sex offense in another state and was required to register under the rules of that state also would have been required to register as a sex offender in Arkansas, and although the requirement to update a registration was undoubtedly burdensome, the government's interest in protecting others from future sexual offenses and preventing sex offenders from subverting the purpose of the statute was sufficiently weighty to overcome the burden. *Stow v. Montgomery*, 2020 Ark. App. 310, 601 S.W.3d 146 (2020).

Requirement to Register.

Where appellant's conviction and imprisonment for a sex offense in Colorado occurred before August 1, 1997, the date of applicability of the Arkansas sex offender registration statute, but the offense was subject to lifetime registration in Colorado, appellant was required to register as a sex offender in Arkansas under subdivision (a)(2) of this section because he would have been required to register as a sex offender in the jurisdiction (Colorado) in which he was adjudicated guilty of a sex offense. This section contains no limitations with respect to when the sex offender was adjudicated guilty or required to register in the foreign jurisdiction, but makes clear that if the person is presently required to register in the foreign jurisdiction, he or she is required to register in Arkansas. *Stow v. Montgomery*, 2020 Ark. App. 310, 601 S.W.3d 146 (2020).

12-12-907. Report to Arkansas Crime Information Center — Report to law enforcement agency.

CASE NOTES

Failure to Report Found.

Circuit court did not err in finding that defendant violated the terms and conditions of his suspended imposition of sen-

tence by committing the new offense of failing to register as a sex offender after he was released from incarceration; although defendant objected to the Arkan-

sas Crime Information Center documents when the documents were introduced, he did not raise the Confrontation Clause basis for objection until after the evidence had been introduced and the State had rested its case and therefore that argument was waived. *Allen v. State*, 2020 Ark. App. 84, 596 S.W.3d 518 (2020).

12-12-909. Verification form — Change of address.

CASE NOTES

Jurisdiction.

Circuit court clearly had jurisdiction because defendant left his registered address in Arkansas, taking all his personal belongings, and he never returned to his registered address and never notified local law enforcement in Arkansas of his new address as required by the Sex Offender Registration Act, § 12-12-901 et seq.; defendant was required to register his new address in Michigan with the local authorities in Arkansas. *Guyton v. State*, 2020 Ark. App. 273, 601 S.W.3d 440 (2020).

12-12-917. Evaluation protocol — Sexually dangerous persons — Juveniles adjudicated delinquent — Examiners.

CASE NOTES

Immunity.

In former teacher’s challenge of true findings of sexual abuse entered nearly 14 years earlier and which he was not notified of, subdivision (b)(4)(B) of this section, concerning immunity, did not bar the administrative law judge from considering the former teacher’s admission in the sex offender assessment report. By reference to § 16-43-601 et seq., the immunity provision in this section provides immunity only from criminal prosecutions, and thereby applies only to conduct that has not been prosecuted, and not conduct that, as here, ended in two convictions. *Ark. Dep’t of Human Servs. v. Mitchell*, 2021 Ark. App. 43 (2021).

Substantial evidence supported the ALJ’s finding that a teacher sexually abused a student where his criminal disposition sheet, sex offender assessment, and the Arkansas State Police Crimes Against Children Division interview summaries were valid, legal, and persuasive evidence. Moreover, the teacher’s arguments against considering that evidence, including issue preclusion and statutory immunity for statements made during sex offender assessments, lacked merit. *Ark. Dep’t of Human Servs. v. Mitchell*, 2021 Ark. App. 53 (2021).

12-12-919. Termination of obligation to register.

CASE NOTES

ANALYSIS

Evidence.
Termination of Registration Requirements.

Evidence.

Appellant’s petition to terminate his obligation to register as a sex offender was properly denied because appellant acknowledged that he had been assessed three times, with the most recent in 2017 in preparation for his petition, and each time he was given a Level 3 assessment; the 2017 assessment indicated that he currently took no responsibility for his sex offense and denied having had sexual contact with his sister, although he previ-

ously acknowledged his sex offense and sexual contact with his sister; the trial court weighed the evidence in favor of the State; and the appellate court deferred to the trial court's superior position in determining the credibility of the witnesses. *Speaks v. State*, 2020 Ark. App. 439, 611 S.W.3d 213 (2020).

Termination of Registration Requirements.

Trial court did not err in denying defendant's motion to terminate the obligation

to register as a sex offender because when defendant filed his motion and when the circuit court held a hearing on the motion, 15 years had not passed since he was placed on parole, as required by this section. *Francisco v. State*, 2020 Ark. App. 397, 608 S.W.3d 628 (2020).

12-12-922. Alternative procedure for sexually dangerous person evaluations — Administrative review of assigned risk level.

CASE NOTES

Appeal.

Because the Sex Offender Assessment Committee failed to file the administrative record with the circuit court as was required by § 25-15-212(d), the circuit court's finding of substantial evidence to

support appellant's designation at Level 2 for community-notification purposes could not be reviewed on appeal and had to be reversed. *Webb v. Sex Offender Assessment Comm.*, 2021 Ark. App. 44 (2021).

CHAPTER 18
CHILD MALTREATMENT ACT
SUBCHAPTER 1 — GENERAL PROVISIONS

12-18-103. Definitions.

CASE NOTES

Abuse.

It was error to reverse the decision of the Department of Human Services to place a father's name on the Child Maltreatment Central Registry because substantial evidence supported the decision, as the father drove while impaired by alcohol at twice the legal limit with his

then six-year-old son in the car, which constituted inadequate supervision (neglect) and a threat of harm (abuse). The statutes do not require that actual injury occur for findings of abuse or neglect. *Ark. Dep't of Human Servs. v. Newcity*, 2020 Ark. App. 32, 594 S.W.3d 112 (2020).

12-18-104. Confidentiality.

CASE NOTES

Release of Records.

Plaintiff's claim for invasion of privacy by intrusion upon seclusion, arising from the release of juvenile investigative re-

ords, failed to state a claim because (1) even if the records were protected from release under this section, plaintiff failed to state facts showing the city's and coun-

ty's release of the records was intentional; (2) plaintiff failed to state facts as to how he conducted himself in a manner consistent with an actual expectation of privacy;

and (3) plaintiff failed to state how he suffered damages. *Duggar v. City of Springdale*, 2020 Ark. App. 220, 599 S.W.3d 672 (2020).

SUBCHAPTER 8 — ADMINISTRATIVE HEARINGS

12-18-813. Notice of investigative determination upon satisfaction of due process.

CASE NOTES

True Finding.

Substantial evidence supported the ALJ's finding that a teacher sexually abused a student where his criminal disposition sheet, sex offender assessment, and the Arkansas State Police Crimes Against Children Division interview summaries were valid, legal, and persuasive evidence. The sex offender assessment report was admissible as the immunity provision of § 12-12-917(b)(4)(B) does not apply to conduct that ended in two convictions. While there was a long and

unexplained delay in notifying the teacher of the true finding as to the student, the failure to follow statutory procedure did not violate due process or otherwise prejudice substantial rights as the administrative hearing occurred after the criminal prosecutions, the teacher could not show that an earlier hearing would have resulted in the removal of his name from the sex offender registry, and the hearing was meaningful. *Ark. Dep't of Human Servs. v. Mitchell*, 2021 Ark. App. 43 (2021) (decision under former § 12-12-501 et seq.).

SUBCHAPTER 9 — CHILD MALTREATMENT CENTRAL REGISTRY

12-18-903. Placement in the Child Maltreatment Central Registry.

CASE NOTES

Placement in Registry Upheld.

It was error to reverse the decision of the Department of Human Services to place a father's name on the Child Maltreatment Central Registry because substantial evidence supported the decision, as the father drove while impaired by alcohol at twice the legal limit with his then six-year-old son in the car, which constituted inadequate supervision (neglect) and a threat of harm (abuse) under § 12-18-103. The statutes do not require that actual injury occur for findings of abuse or neglect. *Ark. Dep't of Human Servs. v. Newcity*, 2020 Ark. App. 32, 594 S.W.3d 112 (2020).

Substantial evidence supported the ALJ's finding that a teacher sexually abused a student where his criminal disposition sheet, sex offender assessment, and the Arkansas State Police Crimes

Against Children Division interview summaries were valid, legal, and persuasive evidence. The sex offender assessment report was admissible as the immunity provision of § 12-12-917(b)(4)(B) does not apply to conduct that ended in two convictions. While there was a long and unexplained delay in notifying the teacher of the true finding as to the student, the failure to follow statutory procedure did not violate due process or otherwise prejudice substantial rights as the administrative hearing occurred after the criminal prosecutions, the teacher could not show that an earlier hearing would have resulted in the removal of the teacher's name from the sex offender registry, and the hearing was meaningful. *Ark. Dep't of Human Servs. v. Mitchell*, 2021 Ark. App. 43 (2021) (decision under former § 12-12-501 et seq.).

SUBTITLE 4. MILITARY AFFAIRS

CHAPTER 64
MILITARY JUSTICE

SUBCHAPTER 4 — COURTS-MARTIAL

12-64-402. Jurisdiction generally.

CASE NOTES

ANALYSIS

Jurisdiction Not Found.
Right to Appeal.

Jurisdiction Not Found.

Duty status of a member of the Arkansas Army National Guard ended after completing his inactive-duty training for the day, and the alleged offenses would have occurred later that evening while the member was not in a duty status; thus, the lack of a duty status meant there was no court-martial jurisdiction for the offenses. Childers v. State, 2020 Ark. 241, 602 S.W.3d 90 (2020).

Right to Appeal.

Member of the Arkansas Army National Guard had an independent statutory right to the procedure of a negotiated guilty plea reserving the right to appeal in a court-martial proceeding because this section and R.C.M. 910(a)(2), Manual Courts-Martial, contemplated that he could enter a negotiated guilty plea and still appeal the court-martial's denial of his motion to dismiss for lack of jurisdiction. Childers v. State, 2020 Ark. 241, 602 S.W.3d 90 (2020).

SUBCHAPTER 8 — PUNITIVE ARTICLES

12-64-801. Persons to be tried or punished.

CASE NOTES

Jurisdiction.

Duty status of a member of the Arkansas Army National Guard ended after completing his inactive-duty training for the day, and the alleged offenses would have occurred later that evening while the

member was not in a duty status; thus, the lack of a duty status meant there was no court-martial jurisdiction for the offenses. Childers v. State, 2020 Ark. 241, 602 S.W.3d 90 (2020).

SUBTITLE 5. EMERGENCY MANAGEMENT

CHAPTER 75
ARKANSAS EMERGENCY SERVICES ACT OF 1973

- SUBCHAPTER.
1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

12-75-134. Religious organization — Di-

saster emergency — Definitions.

Effective Dates. Acts 2021, No. 94, § 4: Became law without Governor's signature, Feb. 11, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the coronavirus 2019 (COVID-19) pandemic and response of the executive branch to the coronavirus 2019 (COVID-19) pandemic have highlighted the need to address the constitutional rights of the citizens of Arkansas, particularly the right to the free exercise of religion; that this act prohibits government interference with the free exercise of religion during a disaster emergency such as the current pandemic; and that this act is

immediately necessary to ensure the protection of the constitutional rights of Arkansans to freely exercise religion. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

12-75-134. Religious organization — Disaster emergency — Definitions.

(a) As used in this section:

(1) "Discriminatory action" means an action taken by the Governor to:

(A) Alter the tax treatment of, or cause any tax, penalty, or payment to be assessed against, or deny, delay, revoke, or otherwise make unavailable an exemption from taxation;

(B) Disallow, deny, or otherwise make unavailable a deduction for state tax purposes of any charitable contribution made to or by a religious organization;

(C) Impose, levy, or assess a monetary fine, fee, civil or criminal penalty, damages award, or injunction; or

(D) Withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any:

(i) State grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, or other similar benefit from or to a religious organization;

(ii) Entitlement or benefit under a state benefit program from or to a religious organization; or

(iii) License, certification, accreditation, recognition, or other similar benefit, position, or status from or to a religious organization;

(2) "Governor" includes:

(A) A state governmental entity or official acting under this subchapter; and

(B) A local governmental entity or official acting under this subchapter;

(3) "Religious organization" means:

(A) A house of worship, including without limitation a church, synagogue, shrine, mosque, or temple;

(B) A religious group, corporation, association, educational institution, ministry, order, society, or similar entity, without regard to whether the entity is integrated or affiliated with a house of worship; or

(C) An officer, owner, employee, manager, religious leader, clergy, or minister of an entity or organization under this subdivision (a)(3); and

(4) "Religious service" means a meeting, gathering, or assembly of two (2) or more persons organized by a religious organization for the purpose of worship, teaching, training, providing educational services, conducting religious rituals, or involving the exercising of the right to practice religion.

(b)(1) The Governor shall not prohibit or limit a religious organization from continuing to operate or engage in religious services during a disaster emergency under this subchapter.

(2)(A) This section does not prevent the Governor from requiring religious organizations to comply with neutral health, safety, or occupancy requirements issued under state or federal law that are applicable to all organizations and businesses.

(B) The Governor shall not enforce a health, safety, or occupancy requirement under subdivision (b)(2)(A) of this section that imposes a substantial burden on a religious organization unless the Governor demonstrates that applying the requirement to the religious organization is essential to further a compelling governmental interest and is the least restrictive means of furthering the compelling governmental interest.

(3) The Governor shall not take discriminatory action under this subchapter against a religious organization wholly or partially on the basis that the religious organization:

(A) Is religious;

(B) Operates or seeks to operate during a disaster emergency under this subchapter; or

(C) Engages in the exercising of the right to practice religion protected by the First Amendment to the United States Constitution.

(c)(1) A religious organization may assert a violation of this section as a claim against the Governor in a judicial or administrative proceeding or as a defense in a judicial or administrative proceeding.

(2) An action under this section may be commenced and relief may be granted in a judicial proceeding without regard to whether the religious organization commencing the action has sought or exhausted all administrative remedies.

(3) A religious organization that successfully asserts a claim or defense under this section may recover:

- (A) Declaratory relief;
 - (B) Injunctive relief to prevent or remedy a violation or the effect of a violation of this section;
 - (C) Compensatory damages for pecuniary and non-pecuniary losses;
 - (D) Reasonable attorney's fees and costs; and
 - (E) Any other appropriate relief.
- (d) Sovereign, governmental, and qualified immunities to suit and from liability are waived and abolished to the extent allowed under law.
- (e) This section shall be construed in favor of a broad protection of free exercise of religion.
- (f)(1) The protection of free exercise of religion afforded under this section is in addition to the protections provided under federal law, state law, the United States Constitution, and the Arkansas Constitution.
- (2) This section does not preempt or repeal any state or local law that is equally or more protective of free exercise of religion.
- (3) This section does not narrow the meaning or application of any state or local law protecting the free exercise of religion.
- (g)(1) This section applies to and in cases of conflict supersedes any statute that infringes upon the free exercise of religion protected by this section, unless a conflicting statute is expressly made exempt from the application of this section.
- (2) This section applies to and in cases of conflict supersedes any ordinance, rule, regulation, order, opinion, decision, practice, or other exercise of the Governor's authority that infringes upon the free exercise of religion protected under this section.
- (h) If a provision or application of this section is held to be invalid under law, the remainder and the application of the section is not affected.
- (i) A religious organization shall bring an action to assert a claim under this section no later than two (2) years after the date the religious organization knew or should have known that a discriminatory action or other violation of this section was taken against the religious organization.

History. Acts 2021, No. 94, § 2.

A.C.R.C. Notes. Acts 2021, No. 94, § 1, provided: "LEGISLATIVE INTENT.

"The General Assembly finds that:

"(1) Religion provides extensive benefits to the country by meeting the spiritual needs of the populace and by supporting vital social needs, including without limitation social services, health care, and economic activity;

"(2) Religion contributes one trillion two hundred billion dollars (\$1,200,000,000,000) annually to the nation's economy and society, including without limitation charitable activities,

health care, educational services, volunteer activities to assist the poor and individuals struggling with addiction or mental illness, and job training programs;

"(3) In the article 'The Socio-economic Contribution of Religion to American Society: An Empirical Analysis', researchers found that 'Congregations, businesses inspired by faith, faith-based charities and institutions not only build communities and families but also strengthen our economy in every town and city of the country.';

"(4) '[E]ven in a pandemic, the Constitution cannot be put away and forgotten.

The restrictions..., by effectively barring many from attending religious services, strike at the very heart of the First Amendment's guarantee of religious liberty.' *Roman Catholic Diocese v. Cuomo*, 2020 U.S. LEXIS 5708, 208 L. Ed. 2d 206, ____ S. Ct. ____, 2020 WL 6948354 (per curiam);

"(5) 'The only explanation for treating religious places differently seems to be a judgment that what happens there just isn't as 'essential' as what happens in secular spaces...That is exactly the kind of discrimination the First Amendment forbids.' *Id.* (Gorsuch, J., concurring);

"(6) 'The Constitution forbids laws that prohibit the free exercise of religion. That guarantee protects not just the right to be a religious person, holding beliefs inwardly and secretly; it also protects the right to act on those beliefs outwardly and publicly.' *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246, 2276 (2020) (Gorsuch, J., concurring);

"(7) The United States Supreme Court has 'long recognized the importance of protecting religious actions, not just religious status.' *Id.*;

"(8) '[T]he First Amendment protects the 'freedom to act' as well as the 'freedom to believe'.' *Id.* (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940));

"(9) The Free Exercise Clause of the First Amendment of the United States Constitution 'protect[s] religious observers against unequal treatment' under the law. *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 542 (1993) (quoting *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 148 (Stevens, J., concurring));

"(10) 'What benefits the government decides to give, whether meager or munificent, it must give without discrimination against religious conduct.' *Espinoza* at 2277 (Gorsuch, J., concurring);

"(11) 'Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists.' *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 717-18 (1981);

"(12) 'The First Amendment does not allow our leaders to decide which rights to honor and which to ignore.' *Spell v. Edwards*, 962 F.3d 175, 183 (5th Cir. 2020) (Ho, J., concurring);

"(13) 'Government does not have carte blanche, even in a pandemic, to pick and choose which First Amendment rights are 'open' and which remain 'closed'.' *Id.* at 181;

"(14) Government officials may not prefer the transmission of secular views over religious ones. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 830-31 (1995); and

"(15) The government may not permit 'life-sustaining' operations to continue during a state of emergency without also permitting 'soul-sustaining' operations such as religious services to continue, especially when the religious services 'adhere to all the public health guidelines required of the other services.' *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)."

CHAPTER 76

INTERSTATE COMPACTS

SUBCHAPTER.

2. EMERGENCY MANAGEMENT ASSISTANCE COMPACT.

SUBCHAPTER 2 — EMERGENCY MANAGEMENT ASSISTANCE COMPACT

SECTION.

12-76-201. Short title.

SECTION.

12-76-202. Text of Compact.

A.C.R.C. Notes. This subchapter was formerly codified as § 12-49-401 et seq.

Due to the transfer of former § 12-49-401 et seq. to this chapter, the preexisting provisions of this chapter have been designated as Subchapter 1.

Publisher's Notes. The Arkansas Code Revision Commission transferred this subchapter from § 12-49-401 et seq. to § 12-76-201 et seq. in 2016. The transfer is noted at §§ 12-49-401, 12-49-402, and the subchapter is being set out here to indicate its current designation.

Effective Dates. Acts 1997, No. 959, § 3: Mar. 31, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to the potential danger posed to the citizens of

the State of Arkansas by natural, man-made disaster, or act of war, there is an immediate need to implement the provisions of this act in the interest of public safety and welfare. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

12-76-201. Short title.

This subchapter may be cited as the "Emergency Management Assistance Compact".

History. Acts 1997, No. 959, § 1.

12-76-202. Text of Compact.

The Emergency Management Assistance Compact is hereby enacted into law and entered into with all other states which adopt the compact in a form substantially as follows:

Emergency Management Assistance Compact

ARTICLE I — PURPOSE AND AUTHORITIES

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this agreement, the term "states" is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state(s), whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during

emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

ARTICLE II — GENERAL IMPLEMENTATION

Each party state entering into this compact recognizes many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full and effective utilization of resources of the participating states, including any resources on hand or available from the Federal Government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

ARTICLE III — PARTY STATE RESPONSIBILITIES

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

i. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack.

ii. Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency.

iii. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans.

iv. Assist in warning communities adjacent to or crossing the state boundaries.

v. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material.

vi. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness.

vii. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within 30 days of the verbal request. Requests shall provide the following information:

i. A description of the emergency service function for which assistance is needed, such as but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.

ii. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed.

iii. The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

ARTICLE IV — LIMITATIONS

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational

units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving state(s), whichever is longer.

ARTICLE V — LICENSES AND PERMITS

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

ARTICLE VI — LIABILITY

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes; and no party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE VII — SUPPLEMENTARY AGREEMENTS

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this instrument contains elements of a broad base common to all states, and nothing herein contained shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

ARTICLE VIII — COMPENSATION

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

ARTICLE IX — REIMBURSEMENT

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this provision.

ARTICLE X — EVACUATION

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

ARTICLE XI — IMPLEMENTATION

A. This compact shall become operative immediately upon its enactment into law by any two (2) states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 30 days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

ARTICLE XII — VALIDITY

This Act shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

ARTICLE XIII — ADDITIONAL PROVISIONS

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.

History. Acts 1997, No. 959, § 2.

TITLE 14

LOCAL GOVERNMENT

SUBTITLE 2. COUNTY GOVERNMENT

CHAPTER.

15. OFFICERS.

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER 1 — GENERAL PROVISIONS

A.C.R.C. Notes. Acts 2020, No. 2, § 68, provided: “ARKADELPHIA 2025 COMMISSION.

“(a) There is hereby created the Arkadelphia 2025 Commission to be composed of the Mayor, City Manager, and Chairman of the City Planning Commission of Arkadelphia, the Superintendent of the Arkadelphia Public School District, the member of the Arkansas House of Representatives representing the Arkadelphia area, the member of the Arkansas Senate representing the Arkadelphia area, the County Judge of Clark County, the Presidents of Ouachita Baptist University and Henderson State University, the President and Executive Secretary of the Arkadelphia Chamber of Commerce, and at least an equal number of citizens of the Arkadelphia area to be appointed by the members just named. The Commission shall be as broadly based as possible to represent all the diverse interests and to represent every race, gender, income level, and geographic area.

“(b) The Commission shall have the following powers and duties:

“(1) Determine the immediate needs of Arkadelphia and its surrounding area;

“(2) Determine the long-range needs and opportunities of the Arkadelphia area;

“(3) Seek and expend funds from all sources, both public and private;

“(4) Coordinate the activities of the various federal, state, and local agencies as well as the private sector in providing for the economic, social, and physical needs of the area;

“(5) To serve as the lead agency in the rebuilding and revitalization of the Arkadelphia area;

“(6) Adopt bylaws and establish goals; and

“(7) Perform all other powers and functions necessary to fulfill its duties.

“(c) The Commission shall be subject to audit by the Division of Legislative Audit.

“The provisions of this section shall be in effect only from July 1, 2020 through June 30, 2021.”

SUBTITLE 2. COUNTY GOVERNMENT

CHAPTER 14

COUNTY GOVERNMENT CODE

SUBCHAPTER 4 — QUORUM COURT DISTRICTS

14-14-401. Establishment — Townships continued.

CASE NOTES

Power of County Courts.

Constables are township officers and the county court cannot abolish the constable position from a township, as each township must have an elected constable, but this requirement does not take away from the county court's authority to abol-

ish or alter township lines; counties are not required to maintain a specific number of townships or constable positions, and there must be one elected constable position in each township. *Clowers v. Edwards*, 2020 Ark. 367 (2020).

County court order was a lawful exer-

cise of authority; by abolishing 12 townships, the county court reduced the number of townships and constable positions to three, and the three new townships collectively encompassed the entire county. There remained a constable position in each of the three townships, which is what the law requires. *Clowers v. Edwards*, 2020 Ark. 367 (2020).

Authority to abolish or alter township lines is statutorily vested in the county court, and Ark. Const. Amend. 55 did not transfer that power to the county judge as an executive function; thus, it remains within the county court, over which the county judge presides. *Clowers v. Edwards*, 2020 Ark. 367 (2020).

SUBCHAPTER 9 — LEGISLATIVE PROCEDURES

14-14-907. Appropriation ordinances.

CASE NOTES

Eligibility for Retirement System.

Substantial evidence supported the finding of the Board of Trustees of the Arkansas Public Employees' Retirement System that former employees of nursing homes owned by counties were not "county employees" under the relevant statutes and were not eligible for membership in the retirement system because their compensation was payable from patient revenues rather than from appropriated funds. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

Assuming that the nursing-home ad-

ministrative boards and their respective counties were synonymous under the definitions of "County employees" and "Employees" in § 24-4-101, the Board of Trustees of the Arkansas Public Employees' Retirement System's finding that the former employees of county-owned nursing homes were not paid from appropriated funds as required by the definition of "Employees" in § 24-4-101 was affirmed as no ordinances in the record specifically designated county money for their compensation. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

SUBCHAPTER 11 — EXECUTIVE POWERS

14-14-1105. Jurisdiction of county court.

CASE NOTES

Township Lines.

Authority to abolish or alter township lines is statutorily vested in the county court, and Ark. Const. Amend. 55 did not transfer that power to the county judge as

an executive function; thus, it remains within the county court, over which the county judge presides. *Clowers v. Edwards*, 2020 Ark. 367 (2020).

SUBCHAPTER 12 — PERSONNEL PROCEDURES

14-14-1203. Compensation and expense reimbursements generally.

CASE NOTES

Eligibility for Retirement System.

Substantial evidence supported the finding of the Board of Trustees of the

Arkansas Public Employees' Retirement System that former employees of nursing homes owned by counties were not

“county employees” under the relevant statutes and were not eligible for membership in the retirement system because their compensation was payable from patient revenues rather than from appropriated funds. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

Assuming that the nursing-home administrative boards and their respective counties were synonymous under the definitions of “County employees” and “Em-

ployees” in § 24-4-101, the Board of Trustees of the Arkansas Public Employees’ Retirement System’s finding that the former employees of county-owned nursing homes were not paid from appropriated funds as required by the definition of “Employees” in § 24-4-101 was affirmed as no ordinances in the record specifically designated county money for their compensation. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

14-14-1206. Compensation of county employees.

CASE NOTES

Eligibility for Retirement System.

Substantial evidence supported the finding of the Board of Trustees of the Arkansas Public Employees’ Retirement System that former employees of nursing homes owned by counties were not “county employees” under the relevant statutes and were not eligible for membership in the retirement system because their compensation was payable from patient revenues rather than from appropriated funds. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

Assuming that the nursing-home ad-

ministrative boards and their respective counties were synonymous under the definitions of “County employees” and “Employees” in § 24-4-101, the Board of Trustees of the Arkansas Public Employees’ Retirement System’s finding that the former employees of county-owned nursing homes were not paid from appropriated funds as required by the definition of “Employees” in § 24-4-101 was affirmed as no ordinances in the record specifically designated county money for their compensation. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

SUBCHAPTER 13 — OFFICERS GENERALLY

14-14-1301. County, quorum court district, and township officers.

CASE NOTES

Constable.

Constables are township officers and the county court cannot abolish the constable position from a township, as each township must have an elected constable, but this requirement does not take away from the county court’s authority to abolish or alter township lines; counties are not required to maintain a specific number of townships or constable positions, and there must be one elected constable position in each township. *Clowers v. Edwards*, 2020 Ark. 367 (2020).

County court order was a lawful exercise of authority; by abolishing 12 townships, the county court reduced the number of townships and constable positions to three, and the three new townships collectively encompassed the entire county. There remained a constable position in each of the three townships, which is what the law requires. *Clowers v. Edwards*, 2020 Ark. 367 (2020).

CHAPTER 15

OFFICERS

SUBCHAPTER.

3. COUNTY CORONERS.

SUBCHAPTER 3 — COUNTY CORONERS

SECTION.

14-15-308. Training and instruction.

Effective Dates. Acts 2021, No. 60, § 2: Feb. 4, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that due to the coronavirus 2019 (COVID-19) pandemic, coroners have devoted an extraordinary amount of time and effort to prepare and respond to the pandemic; that the ability of a coroner to complete the training required under current law is severely hampered due to pandemic-related time constraints and cancellations of trainings; and that this act is immediately necessary be-

cause an extension of time will allow coroners to complete required training. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

14-15-308. Training and instruction.

(a) The Division of Law Enforcement Standards and Training, in coordination with the Department of Health, shall establish a training curriculum for medicolegal death investigators, coroners, and deputy coroners in Arkansas that consists of no less than sixteen (16) hours nor more than forty (40) hours of instruction, including without limitation courses on:

- (1) Medicolegal death investigation leading to certification as a medicolegal death investigator;
- (2) Scene investigation;
- (3) Body recovery;
- (4) Safety;
- (5) Statutes and rules;
- (6) Documentation and reporting;
- (7) Communication and interviewing; and
- (8) Proper completion of a death certificate and assignment of cause of death.

(b) The division shall:

- (1) Issue a certificate of satisfactory participation and completion to a coroner, deputy coroner, or medicolegal death investigator who completes the instructional program required under subsection (a) of this section; and

(2)(A) Administer the funds for the payment and reimbursement for materials, speakers, mileage, lodging, meals, the cost of the certificate, and training equipment that are in addition to compensation allowed under §§ 14-14-1203, 14-14-1204, and 14-14-1206.

(B) The division may receive funding for coroner training through grants-in-aid, donations, and the County Coroners Continuing Education Fund.

(c) The division shall provide death investigation training:

(1) Free of charge to a law enforcement officer, a state death investigator, and an employee of the State Crime Laboratory; and

(2) For a fee under a memorandum of understanding between the division and the Arkansas Coroner's Association to coroners and deputy coroners.

(d)(1)(A) Within one (1) year of beginning employment as a deputy coroner, a person employed as a deputy coroner after January 1, 2021, shall complete the training required under this section and obtain a certificate under subdivision (b)(1) of this section or present a certificate from the American Board of Medicolegal Death Investigators.

(B) A deputy coroner under subdivision (d)(1)(A) of this section who does not comply with this subsection shall not continue employment or activity as a deputy coroner, including without limitation signing death certificates or assisting in death investigations.

(2) Within one (1) year of the date of employment of a deputy coroner, the coroner shall provide the county judge with the deputy coroner's:

(A) Name;

(B) Address;

(C) Starting date of employment; and

(D) Copy of the certificate under subdivision (d)(1)(A) of this section.

History. Acts 2013, No. 551, § 5; 2019, No. 238, § 1; 2019, No. 910, §§ 5922-5924; 2021, No. 60, § 1.

SUBTITLE 3. MUNICIPAL GOVERNMENT

CHAPTER 40

ANNEXATION, CONSOLIDATION, AND DETACHMENT BY MUNICIPALITIES

SUBCHAPTER 5 — ANNEXATION OF SURROUNDED LAND

14-40-503. Procedure for annexation.

CASE NOTES

Time Limitation.

Purchaser failed to file its suit against city within 30 days of passage of an ordi-

nance because the ordinance was passed on August 24, 2015, and the purchaser's complaint was not filed until April 16,

2019; because the purchaser failed to avail itself of the remedy specifically provided by the applicable statute, the circuit court did not err in dismissing the amended complaint. *Hole In the Wall NWA, LLC v. City of Bella Vista*, 2020 Ark. App. 373, 609 S.W.3d 8 (2020).

This section is clear and unambiguous, and subsection (b) provides that an annexation decision by the municipal council

shall be final unless suit is brought within 30 days of passage; this section sets forth the procedure for a city to annex property, and subsection (b) is the appropriate statutory provision on which to mount a challenge to the validity of an annexation ordinance. *Hole In the Wall NWA, LLC v. City of Bella Vista*, 2020 Ark. App. 373, 609 S.W.3d 8 (2020).

SUBCHAPTER 20 — MUNICIPAL SERVICES

14-40-2002. Annexation into adjoining municipality.

CASE NOTES

Annexation.

Trial court properly dismissed a city’s suit to declare an annexation by a second city void because the second city made the public access that the owner requested available, while the first city did not, and given the second city’s action of obtaining the additional right-of-way onto the

southern undeveloped portion of the property for future extension and placing the subject road on the master street plan, substantial steps toward constructing the public road had been taken. *City of Tontitown v. City of Springdale*, 2020 Ark. App. 528 (2020).

CHAPTER 54

POWERS OF MUNICIPALITIES GENERALLY

SUBCHAPTER 9 — REGULATION OF UNSANITARY CONDITIONS

14-54-903. Refusal of owner to comply — Definitions.

CASE NOTES

Reimbursement of Costs.

Circuit court properly granted summary judgment to a city in its action to reimburse the city for the costs incurred in the demolition of a building on the owner’s property because the owner argued in a conclusory and unconvincing manner that the circuit court did not give

him a trial on his counterclaim — that a quasi-contract had been formed when the owner relied on the director of public works’ promise and the city’s ratification of the director’s actions in a subsequent meeting with the former mayor. *Thigpen v. City of El Dorado*, 2020 Ark. App. 531 (2020).

CHAPTER 55

ORDINANCES OF MUNICIPALITIES

SUBCHAPTER 2 — PROCEDURES FOR ADOPTION

14-55-202. Reading requirement.

CASE NOTES

Suspension of Rules.

Passage of Springtown, Ark., Ordinance No. 2014-03 was in direct violation of this section, and as a result, was void where the town council consisted of five members, but only three members voted to dispense with the reading requirement.

The fact that the other two council members had abstained due to a conflict did not alter the requirement that four members' votes were needed. *Town of Springtown v. Evans*, 2020 Ark. App. 176, 598 S.W.3d 538 (2020) (decided under pre-2017 version of statute).

SUBTITLE 5. IMPROVEMENT DISTRICTS GENERALLY

CHAPTER 94

MUNICIPAL PROPERTY OWNERS' IMPROVEMENT DISTRICT LAW

14-94-103. Definitions.

CASE NOTES

Real Property.

Improvement district's lien for nonpayment of improvement taxes attached to unimproved tracts; under the definition of "real property" in this section, the land need only be subject to assessment, and it is not necessary that a benefit actually be

assessed. The unimproved land in question was subject to the initial assessment and therefore constituted "real property" under § 14-94-101 et seq. *Bullock's Ky. Fried Chicken, Inc. v. City of Bryant*, 2019 Ark. 249, 582 S.W.3d 8 (2019).

14-94-106. Hearing on petition and determination.

CASE NOTES

Notice.

Notice provisions in a prior version of this section, allowing notice by publication, did not violate due process because appellants failed to establish that notice

by publication was inappropriate to the circumstances of the case. *Bullock's Ky. Fried Chicken, Inc. v. City of Bryant*, 2019 Ark. 249, 582 S.W.3d 8 (2019) (decision under prior law).

14-94-116. Filing and notice of assessment — Hearing.

CASE NOTES

Constitutionality.

Notice provisions within § 14-94-101 et seq. did not violate due process because indirect notice has been held sufficient in matters affecting real estate and appel-

lants failed to establish that notice by publication was inappropriate to the circumstances of the case. Bullock’s Ky. Fried Chicken, Inc. v. City of Bryant, 2019 Ark. 249, 582 S.W.3d 8 (2019).

14-94-118. Levy of tax.

CASE NOTES

ANALYSIS

Attachment of Lien.
Commissioner’s Prior Fraud Not Imputable to District.
Prepayment of Taxes.

Attachment of Lien.

Improvement district’s lien for nonpayment of improvement taxes attached to unimproved tracts; under the definition of “real property” in § 14-94-103, the land need only be subject to assessment, and it is not necessary that a benefit actually be assessed. The unimproved land in question was subject to the initial assessment and therefore constituted “real property” under § 14-94-101 et seq. Bullock’s Ky. Fried Chicken, Inc. v. City of Bryant, 2019 Ark. 249, 582 S.W.3d 8 (2019).

Appellants’ contention that improvement district’s lien attached only to individual tracts on which improvement taxes were actually delinquent and unpaid was rejected; the plain language of subsection (b) of this section indicates a legislative intent for all property within the district to be subject to the lien. Bullock’s Ky. Fried Chicken, Inc. v. City of Bryant, 2019 Ark. 249, 582 S.W.3d 8 (2019).

Commissioner’s Prior Fraud Not Imputable to District.

Fraud of an attorney who did not record sellers’ mortgages so as to give the sellers

the priority the sellers bargained for but instead recorded a bank’s mortgage before recording the sellers’ mortgages was not imputable to an improvement district for which the attorney later served as commissioner because, inter alia, the priority of the improvement district’s lien was not due to the fraud, but was statutory. Bullock’s Ky. Fried Chicken, Inc. v. City of Bryant, 2019 Ark. 249, 582 S.W.3d 8 (2019).

Prepayment of Taxes.

Improvement district and a bank did not improperly refuse to allow an assignee to prepay improvement taxes due on certain tracts in the improvement district to release those tracts from the tax lien because (1) a prepayment provision in a trust indenture was not triggered when a developer never sold the tracts, (2) subsection (b) of this section did not apply, as there was no evidence of written approval by the improvement district’s board to release any tracts, (3) the assignee never actually paid the taxes, and (4) the right to prepay taxes was not absolute. Bullock’s Ky. Fried Chicken, Inc. v. City of Bryant, 2019 Ark. 249, 582 S.W.3d 8 (2019).

14-94-122. Payment of taxes — Enforcement.**CASE NOTES****ANALYSIS**

Attachment of Lien.
Requirements for Foreclosure Complaint.

Attachment of Lien.

Requirement in this section that foreclosure actions under § 14-94-101 et seq. proceed in rem did not mean that the improvement district could only foreclose on specific tracts that were delinquent on payment of assessment taxes rather than on all the property within the improvement district; given that the legislative intent indicates that the lien attaches to all unreleased property within an improvement district, it is fair to assume the requirement of in rem proceedings merely intends to limit the scope of the foreclosure action to real property within a district. *Bullock's Ky. Fried Chicken, Inc. v.*

City of Bryant, 2019 Ark. 249, 582 S.W.3d 8 (2019).

Requirements for Foreclosure Complaint.

Failure of improvement district's foreclosure complaint to separately describe each delinquent tract and the taxes due on each tract was not fatal because (1) § 14-94-101 et seq. did not define the term "tract" used in this section nor contain specific instructions for how a district should delineate land to be foreclosed upon, and (2) the complaint plainly described the land the improvement district sought to foreclose, as well as the tracts excluded from the action, and identified the owner of the land and the total amount of taxes owed. *Bullock's Ky. Fried Chicken, Inc. v. City of Bryant*, 2019 Ark. 249, 582 S.W.3d 8 (2019).

SUBTITLE 10. ECONOMIC DEVELOPMENT AND TOURISM GENERALLY

CHAPTER 164

INDUSTRIAL DEVELOPMENT BONDS

SUBCHAPTER 3 — LOCAL GOVERNMENT BOND ACT

14-164-333. Capital improvement bonds — Local sales and use tax — Administration, collection, etc.

CASE NOTES**Construction.**

City was not entitled to a per capita share of the 1% sales and use tax levied under § 26-73-113 and originally used solely for solid waste management; the City's argument that §§ 26-73-113 and this section incorporated the per capita remittance procedure in § 26-74-214(b)(2)(B)(i) was not supported by the plain language of the relevant statutes and thus the state treasurer was not required to remit the tax to the county and municipalities on a per capita basis. Instead, the state treasurer was always required to remit the tax proceeds directly

to the county in accordance with §§ 26-73-113 and 14-164-336(c), irrespective of whether the interlocal agreement was repealed or not. *City of Magnolia v. Milligan*, 2019 Ark. App. 374, 584 S.W.3d 716 (2019).

This section does not apply to the state treasurer at all; rather, the state treasurer's remittance of the tax levied under § 26-73-113 is addressed in § 14-164-336. Further, § 14-164-336(c)'s reference to the county tax code does not include the per capita remittance procedure in § 26-74-214(b)(2). The plain language of § 14-164-336(c) is directed only to those provi-

sions, such as § 26-74-214(a)(2), that authorize the state treasurer to withhold “charges payable and retainage” from the remitted funds. *City of Magnolia v. Milligan*, 2019 Ark. App. 374, 584 S.W.3d 716 (2019).

14-164-336. Local Sales and Use Tax Trust Fund.

CASE NOTES

Construction.

City was not entitled to a per capita share of the 1% sales and use tax levied under § 26-73-113 and originally used solely for solid waste management; the City’s argument that §§ 26-73-113 and 14-164-333 incorporated the per capita remittance procedure in § 26-74-214(b)(2)(B)(i) was not supported by the plain language of the relevant statutes and thus the state treasurer was not required to remit the tax to the county and municipalities on a per capita basis. Instead, the state treasurer was always required to remit the tax proceeds directly to the county in accordance with §§ 26-73-113 and subsection (c) of this section, irrespective of whether the interlocal agreement was repealed or not. *City of*

Magnolia v. Milligan, 2019 Ark. App. 374, 584 S.W.3d 716 (2019).

Section 14-164-333 does not apply to the state treasurer at all; rather, the state treasurer’s remittance of the tax levied under § 26-73-113 is addressed in this section. Further, the reference in subsection (c) of this section to the county tax code does not include the per capita remittance procedure in § 26-74-214(b)(2). The plain language of subsection (c) of this section is directed only to those provisions, such as § 26-74-214(a)(2), that authorize the state treasurer to withhold “charges payable and retainage” from the remitted funds. *City of Magnolia v. Milligan*, 2019 Ark. App. 374, 584 S.W.3d 716 (2019).

SUBCHAPTER 4 — LOCAL GOVERNMENT CAPITAL IMPROVEMENT REVENUE BOND ACT

14-164-402. Definitions.

CASE NOTES

Cited: Bd. of Trs. of the Ark. Pub. Empls. Ret. Sys. v. Garrison, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

14-164-405. Bonds — Issuance generally.

CASE NOTES

Cited: Bd. of Trs. of the Ark. Pub. Empls. Ret. Sys. v. Garrison, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

SUBTITLE 12. PUBLIC UTILITIES GENERALLY**CHAPTER 208****VALUATION OF RURAL WATER SERVICE PROPERTIES
AND FACILITIES UPON ANNEXATION****14-208-102. Right to acquire rural water service properties,
facilities, and customers — Definition.****CASE NOTES****Construction.**

Circuit court did not err in finding that federal law prevented the City of Gravette from acquiring another city's water facilities within the annexed area, even though the City of Gravette pleaded that it intended to pay the federal indebtedness associated with the facilities. The plain language of this section directs that fed-

eral law supersedes state law; the federal law, 7 U.S.C. § 1926(b), protects a water association from a forcible acquisition; and it is within the resisting water association's discretion whether to raise the federal defense. *City of Gravette v. Centerton Waterworks & Sewer Comm'n*, 2019 Ark. App. 540, 589 S.W.3d 456 (2019).

TITLE 15**NATURAL RESOURCES AND ECONOMIC
DEVELOPMENT*****SUBTITLE 1. DEVELOPMENT OF ECONOMIC AND NATURAL RESOURCES
GENERALLY*****CHAPTER.**

10. ENERGY CONSERVATION AND DEVELOPMENT.
11. PUBLICITY AND TOURISM.

***SUBTITLE 1. DEVELOPMENT OF ECONOMIC AND
NATURAL RESOURCES GENERALLY*****CHAPTER 10****ENERGY CONSERVATION AND DEVELOPMENT****SUBCHAPTER.**

2. ARKANSAS ENERGY REORGANIZATION AND POLICY ACT OF 1981.

**SUBCHAPTER 2 — ARKANSAS ENERGY REORGANIZATION AND POLICY ACT OF
1981****SECTION.**

- 15-10-202. Declaration of policy.

15-10-202. Declaration of policy.

- The General Assembly finds and declares that:
- (1) The adequacy of future energy supplies will be crucial to the state’s economic development;
 - (2) In order to create a favorable environment for economic development and in order to preserve and enhance our present quality of life, Arkansas must promote the efficient use of energy and the development of a reliable and economic energy delivery system which includes the use of renewable energy resources as well as conventional sources of energy such as coal, lignite, uranium, oil, and natural gas;
 - (3) The need exists for comprehensive state leadership to ensure the wise and efficient production, distribution, use, and conservation of energy;
 - (4) Only an agency with comprehensive duties and powers can collect, analyze, and disseminate information necessary to promote a reliable and efficient energy delivery system for the state;
 - (5) It is in the best interest of the citizens of this state to establish the Arkansas Energy Office of the Division of Environmental Quality to coordinate the planning and execution of comprehensive energy conservation programs; and
 - (6) The development and use of a diverse array of energy resources must be encouraged.

History. Acts 1981, No. 7, § 2; A.S.A. 1947, § 5-937; Acts 1997, No. 540, § 34; 2017, No. 271, § 5; 2019, No. 910, § 3054.

Publisher’s Notes. This section is being set out to reflect a correction to the History in the 2019 supplement pamphlet.

Amendments. The 2017 amendment substituted “the Arkansas Energy Office

of the Arkansas Department of Environmental Quality” for “a division within the Arkansas Economic Development Commission” in (5).

The 2019 amendment substituted “Division of Environmental Quality” for “Arkansas Department of Environmental Quality” in (5).

CHAPTER 11

PUBLICITY AND TOURISM

SUBCHAPTER.

5. ARKANSAS TOURISM DEVELOPMENT ACT.

SUBCHAPTER 5 — ARKANSAS TOURISM DEVELOPMENT ACT

SECTION.

15-11-511. Special rules — Qualified

amusement parks — Definition.

15-11-511. Special rules — Qualified amusement parks — Definition.

(a) As used in this section, “qualified amusement park” means a commercial recreational activity that:

(1) Operates at least three (3) consecutive months during a calendar year;

(2) Offers rides, shows, games, and other diversions;

(3) Otherwise qualifies as an approved company under § 15-11-503(2);

(4) Operates within a designated area of not less than one hundred (100) acres; and

(5) Has annual gross receipts from paid admissions of at least four million dollars (\$4,000,000) during a calendar year.

(b)(1) A qualified amusement park may claim the sales tax credit provided in § 15-11-507 against its liability for:

(A) Gross receipts tax levied under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.; and

(B) Tourism gross receipts tax levied under § 26-63-401 et seq.

(2) A qualified amusement park may not claim the sales tax credit against any other taxes collected by the state other than as provided in this section.

(3) An approved company other than a qualified amusement park may only claim the sales tax credit provided in § 15-11-507 against the gross receipts tax levied under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.

(4) The sales tax credit provided in this section to a qualified amusement park may be carried forward and used in the same manner as provided in § 15-11-507(c).

(c) A qualified amusement park entitled to any unused sales tax credits on March 1, 2005, may use the sales tax credits to offset its liability for:

(1) Gross receipts tax levied under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., for the remaining carry-forward period as provided in § 15-11-507(c) and calculated from the date of original issuance of the sales tax credit memorandum; and

(2)(A) Tourism gross receipts tax levied under § 26-63-401 et seq. for a period of ten (10) years beginning on March 1, 2005.

(B) At the end of the ten-year period, the qualified amusement park shall not be allowed to use any unused credits against tourism gross receipts tax levied under § 26-63-401 et seq.

(d)(1) Notwithstanding the other provisions of this subchapter, a qualified amusement park that on or after January 1, 2006, enters into an agreement that provides that the qualified amusement park shall expend approved costs of more than one million dollars (\$1,000,000) shall be entitled to a sales tax credit if the qualified amusement park certifies to the Secretary of the Department of Finance and Administration that it has expended at least one million dollars (\$1,000,000) in approved costs and the Director of the Arkansas Economic Development Commission certifies that the qualified amusement park is in compliance with this subchapter.

(2) The secretary shall then issue a sales tax credit memorandum to the qualified amusement park equal to twenty-five percent (25%) of the

approved costs. The sales tax credit memorandum may be used to offset the liability of the qualified amusement park for:

(A) Gross receipts tax levied under the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq.; and

(B) Tourism gross receipts tax levied under § 26-52-1001 et seq. [repealed].

(3) The secretary may require proof of expenditures.

(4) Additional credit memoranda may be issued as the qualified amusement park certifies additional expenditures of approved costs.

(5)(A) No sales tax credit memorandum shall be issued for any approved costs expended after the expiration of two (2) years from the date the agreement was signed by the director and the qualified amusement park.

(B) However, the secretary, with the advice and consent of the director, may authorize sales tax credits for approved costs expended up to four (4) years from the date the agreement was signed if the director determines that the failure to complete the tourism attraction project within two (2) years resulted from:

(i) Unanticipated and unavoidable delay in the construction of the tourism attraction project;

(ii) The tourism attraction project, as originally planned, will require more than two (2) years to complete; or

(iii) A change in business ownership or business structure resulting from a merger or an acquisition.

(6) The credit memorandum issued pursuant to subdivision (d)(2) of this section may be used to offset one hundred percent (100%) of the reported state tax liability as provided in subdivision (d)(2) of this section of the qualified amusement park for all sales tax reporting periods following the issuance of the credit memorandum, subject to the following limitations:

(A) Unused credits may be carried forward for a period of nine (9) years; and

(B) All issued credit memoranda shall expire at the end of the month following the expiration of the agreement as provided in § 15-11-506.

(7) The approved company shall have no obligation to refund or otherwise return any amount of this credit to the person from whom the sales tax was collected.

(8) By April 1 of each year, the secretary shall certify to the director the state sales tax liability of the qualified amusement parks receiving inducements under this section and the amount of state sales tax credits taken during the preceding calendar year.

History. Acts 2005, No. 241, § 2; 2007, No. 182, § 14; 2007, No. 1039, §§ 3, 4; 2019, No. 910, §§ 464-466.

Publisher's Notes. This section is being set out to reflect a correction to the

History in the 2019 supplement pamphlet.

Amendments. The 2019 amendment substituted "Secretary of the Department of Finance and Administration" for "Direc-

tor of the Department of Finance and Administration" throughout the section; substituted "Director of the Arkansas Economic Development Commission" for "Executive Director of the Arkansas Economic

Development Commission" in (d)(1); and substituted "director" for "Executive Director of the Arkansas Economic Development Commission" throughout (d).

SUBTITLE 6. OIL, GAS, AND BRINE

CHAPTER 71

OIL AND GAS COMMISSION

15-71-110. Powers and duties — Rules — Definitions.

CASE NOTES

Authority of the Commission.

Amended integration orders entered by the Oil and Gas Commission were upheld, including the commission's decision to reduce the royalty rates payable under the leases when the lessees elected to go "non-consent." The commission had both plenary and explicit statutory authority to ensure that all integration orders were upon terms that were "just and reason-

able" and that would afford each owner the opportunity to receive "his or her just and equitable share without unnecessary expense", and detailed provisions were generally found in the terms of the integration order itself or in the joint operating agreement that was incorporated into each order. *Hurd v. Ark. Oil & Gas Comm'n*, 2020 Ark. 210, 601 S.W.3d 100 (2020).

CHAPTER 72

OIL AND GAS PRODUCTION AND CONSERVATION

SUBCHAPTER 3 — POOLS AND DRILLING UNITS

15-72-304. Integration orders generally.

CASE NOTES

Reasonable Compensation.

Amended integration orders entered by the Oil and Gas Commission were upheld, including the commission's decision to reduce the royalty rates payable under the leases when the lessees elected to go "non-

consent." The commission had both plenary and explicit statutory authority to ensure that all integration orders were upon terms that were "just and reasonable" and that would afford each owner the opportunity to receive "his or her just

and equitable share without unnecessary expense”, and detailed provisions were generally found in the terms of the integration order itself or in the joint operating agreement that was incorporated into each order. *Hurd v. Ark. Oil & Gas Comm’n*, 2020 Ark. 210, 601 S.W.3d 100 (2020).

TITLE 16

PRACTICE, PROCEDURE, AND COURTS

SUBTITLE 2. COURTS AND COURT OFFICERS

CHAPTER.

17. DISTRICT COURTS.

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 4

UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT

16-4-101. Personal jurisdiction of Arkansas courts.

CASE NOTES

ANALYSIS

Due Process.

—Contacts Found.

Due Process.

—Contacts Found.

In an action alleging fraud and other claims related to an investment agreement, the federal district court erred in dismissing plaintiff’s action for lack of personal jurisdiction because defendants, a California resident and his California-based business, had sufficient contacts with Arkansas to establish personal jurisdiction; the facts suggested that the individual defendant’s contacts with Arkansas were not random, fortuitous, or attenuated, but rather were central to an

alleged scheme to purposely avail himself of the privilege of conducting activities in Arkansas, and the individual defendant’s actions in and affecting Arkansas were central to plaintiffs’ allegations of fraud and misrepresentation and supported a finding of specific jurisdiction. *Whaley v. Esebag*, 946 F.3d 447 (8th Cir. 2020).

In a suit to recover legal fees, there was personal jurisdiction consistent with due process because the guarantor’s contacts were such that he should have anticipated being haled into court in Arkansas since he negotiated the legal services contract, made hundreds of calls and emails to the Arkansas law firm, and visited the state regarding the litigation. *Henry Law Firm v. Cuker Interactive, LLC*, 949 F.3d 1101 (8th Cir. 2020).

CHAPTER 7

DISPUTE RESOLUTION

SUBCHAPTER 2 — DISPUTE RESOLUTION PROCESSES

16-7-201. Legislative purpose and intent.

CASE NOTES

Cited: Wynne-Ark., Inc. v. Richard Baughn Constr., 2020 Ark. App. 140, 597 S.W.3d 114 (2020).

16-7-202. Duty and authority of the courts.

CASE NOTES

Abuse of Discretion.

In a medical malpractice case, the circuit court erred in striking a request by defendants doctor and his practice (jointly, the doctor) for a jury trial as a sanction for failing to comply with its scheduling order's mediation requirement because the doctor did not consent to a bench trial, the medical malpractice claim was a legal claim to which the right of a jury trial attached, the circuit court lacked the au-

thority under this section to divest the doctor of his fundamental constitutional right to a jury trial, predispute contractual jury waivers are unenforceable under Ark. Const., Art. 2, § 7, a trial by jury was demanded under Ark. R. Civ. P. 38, and there is no law prescribing a waiver of the right to a jury trial as a sanction for failing to comply with a court's order to mediate. Bandy v. Vick, 2020 Ark. 334, 608 S.W.3d 903 (2020).

16-7-206. Confidentiality of communications in dispute resolution procedures.

CASE NOTES

Discovery.

It was error to grant at this point in the case defendant subcontractor's motion to compel discovery of the confidential settlement agreement between plaintiff and defendant general contractor that resulted from mediation, when the subcontractor sought contribution and apportionment of fault, because (1) any right of contribution does not arise until one joint tortfeasor pays more than the tortfeasor's share of

liability, and no damages had been awarded yet, and (2) it was error to find the general contractor and subcontractor were joint tortfeasors before any evidence was presented. Contrary to plaintiff's argument, however, the Civil Justice Reform Act, § 16-55-201 et seq., did not eliminate contribution among "joint tortfeasors". Wynne-Ark., Inc. v. Richard Baughn Constr., 2020 Ark. App. 140, 597 S.W.3d 114 (2020).

SUBTITLE 2. COURTS AND COURT OFFICERS

CHAPTER 10

GENERAL PROVISIONS

SUBCHAPTER 1 — GENERAL PROVISIONS

16-10-108. Contempt.

CASE NOTES

ANALYSIS

Direct Contempt.
Notice.
Relation to Other Law.

Direct Contempt.

Appellant’s claim that his sentence was illegal on its face because the circuit court lacked the authority to impose it failed because the circuit court clearly found appellant guilty of direct criminal attempt for disregarding its order and sentenced him under its inherent power to punish contemptuous behavior in its presence. Hence, appellant’s argument that the circuit court violated this section was without merit. *Neely v. State*, 2020 Ark. App. 547 (2020).

Notice.

Circuit court erred in finding the father in contempt for nonpayment of child sup-

port because he was entitled to notice of the contempt accusation and a reasonable time to defend it, which he did not receive, as the mother did not file a motion for contempt on the issue of the child-support arrearages. *Wadley v. Wadley*, 2019 Ark. App. 549, 590 S.W.3d 754 (2019).

Circuit court’s criminal contempt finding against former wife did not violate due process or this section because the former husband’s contempt petition and the wife’s response to it belied her argument that she was not informed of the alleged misconduct—not making timely child support payments—or of the possible consequences of it. *Crowe v. Crowe*, 2020 Ark. App. 37 (2020).

Relation to Other Law.

Criminal contempt findings do not violate an automatic bankruptcy stay. *Crowe v. Crowe*, 2020 Ark. App. 37 (2020).

SUBCHAPTER 3 — UNIFORM FILING FEES AND COURT COSTS

16-10-305. Court costs.

CASE NOTES

Cited: *City of Little Rock v. Nelson*, 2020 Ark. 34, 592 S.W.3d 633 (2020); *Hayes v. State*, 2020 Ark. 297 (2020).

CHAPTER 11

SUPREME COURT

SUBCHAPTER 1 — GENERAL PROVISIONS

16-11-108. Disqualification of justice.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Elizabeth James, Note: Confusion, Clarification and Continued Considerations: A Closer Look at Arkansas's Judicial Disqualification Rules in Light of *Ferguson v. State*, 40 U. Ark. Little Rock L. Rev. 283 (2017).

CHAPTER 13

CIRCUIT COURTS

SUBCHAPTER 2 — CIRCUIT COURTS GENERALLY

16-13-214. Disqualification of judges.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Elizabeth James, Note: Confusion, Clarification and Continued Considerations: A Closer Look at Arkansas's Judicial Disqualification Rules in Light of *Ferguson v. State*, 40 U. Ark. Little Rock L. Rev. 283 (2017).

SUBCHAPTER 5 — COURT REPORTERS

16-13-510. Complete record required — Waiver.

CASE NOTES

Cited: *Terry v. State*, 2019 Ark. 342 (2019).

SUBCHAPTER 7 — ENFORCEMENT OF FINES

16-13-704. Installment payments — Definition.

CASE NOTES

ANALYSIS

Due Process.
Illegal Fee.

Due Process.

Circuit court properly denied the city a directed verdict in a class action alleging that the assessment of installment fees in

Little Rock District Court, Second Division violated due process in charging installment fees even if the fine was paid off early. The lack of notice, as established by the evidence at trial, precluded satisfaction of due process; there was no evidence showing that plaintiff mother was advised of a refund or reconsideration of the fee, but instead, she was simply told by the

court cashier that she had to pay the entire sum. *City of Little Rock v. Nelson*, 2020 Ark. 34, 592 S.W.3d 633 (2020).

In a class action alleging that the assessment of installment fees in Little Rock District Court, Second Division violated due process, an appeal under Ark. R. Crim. P. 36 would not have provided an adequate procedure for the return of an illegal fee because an appeal would have placed defendant at risk of a harsher sentence solely to avoid the imposition of the unlawfully assessed installment fee. *City of Little Rock v. Nelson*, 2020 Ark. 34, 592 S.W.3d 633 (2020).

Circuit court properly denied the city a directed verdict in a class action alleging that the assessment of installment fees in Little Rock District Court, Second Division violated due process because the installment fee policy constituted a governmental policy or custom to which

municipal liability could attach; the district court judge consulted with deputy city attorneys and others in implementing the policy and the policy was automatically applied to all district court defendants on an installment plan. *City of Little Rock v. Nelson*, 2020 Ark. 34, 592 S.W.3d 633 (2020).

Illegal Fee.

Due process violation arising from a district court judge’s installment fee policy could be imputed to the city because the judge was an employee of the city since the Little Rock District Court had not yet been reorganized as a state district court at the times relevant to the case; the Little Rock District Court was not part of the state district court program at the time of the events alleged in the complaint. *City of Little Rock v. Nelson*, 2020 Ark. 34, 592 S.W.3d 633 (2020).

CHAPTER 15
COUNTY COURTS

16-15-111. Disqualification of judges.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Elizabeth James, Note: Confusion, Clarification and Continued Considerations: A Closer Look

at Arkansas’s Judicial Disqualification Rules in Light of *Ferguson v. State*, 40 U. Ark. Little Rock L. Rev. 283 (2017).

CHAPTER 17
DISTRICT COURTS

SUBCHAPTER.

11. STATE DISTRICT COURTS.

SUBCHAPTER 1 — GENERAL PROVISIONS

16-17-119. Counties with populations over 250,000 — District court expenses.

CASE NOTES

Reorganization.

Due process violation arising from a district court judge’s installment fee policy could be imputed to the city because the judge was an employee of the city

since the Little Rock District Court had not yet been reorganized as a state district court at the times relevant to the case; the Little Rock District Court was not part of the state district court program at the

time of the events alleged in the complaint. *City of Little Rock v. Nelson*, 2020 Ark. 34, 592 S.W.3d 633 (2020).

16-17-124. Fee for appeal transcript — Disposition.

CASE NOTES

Appellate Jurisdiction.

Circuit court erred in granting the State's motion to dismiss defendant's appeal for lack of jurisdiction for failure to pay the \$5 fee required by this section and Ark. R. Crim. P. 36(c), where the record demonstrated that defendant, consistent with Ark. R. Crim. P. 36(d), had filed an affidavit with the required information concerning the district court clerk's failure to timely certify the record, and served

the clerk of the district court and the prosecuting attorney with the affidavit to place jurisdiction in the circuit court. The filing of defendant's affidavit triggered jurisdiction of his appeal from the district court and strictly complied with Ark. R. Crim. P. 36(d) to commence an appeal from the district court to the circuit court. *Treat v. State*, 2019 Ark. 326, 588 S.W.3d 10 (2019).

SUBCHAPTER 2 — ESTABLISHMENT IN CITIES OF 2,400 OR MORE AND COUNTY SEAT TOWNS OF LESS THAN 2,400

16-17-211. District court clerks generally.

CASE NOTES

City Employee.

Federal district court erred in dismissing plaintiff's § 1983 action alleging that defendant city violated her constitutional rights by failing to document that she paid certain fines and requesting issuance of a warrant for her arrest, as the complaint stated at least a plausible claim that the Phillips County district court clerk was a city official at the time of the alleged wrongdoing, rather than a state official, in which case the city could be accountable for actions of the clerk that established or carried out an unconstitutional policy or custom of the municipality. *Evans v. City*

of Helena-West Helena, 912 F.3d 1145 (8th Cir. 2019).

It was not until after the events alleged in the complaint that Phillips County was one of several counties that were reorganized as state district courts and served by a state district court judge. Before that time, state law gave cities and counties authority to set salaries for the district court clerk, and the complaint alleged that employees of the district court were hired by the city and paid by the city. *Evans v. City of Helena-West Helena*, 912 F.3d 1145 (8th Cir. 2019).

SUBCHAPTER 11 — STATE DISTRICT COURTS

SECTION.

16-17-1110. Organization and designation.

Effective Dates. Acts 2021, No. 87, § 2: Feb. 9, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkan-

sas that the town of Bethel Heights was annexed into the city of Springdale in August of 2020 by a vote of the people. Because of the annexation, the status of

the Bethel Heights District Court has not been clearly established under current law, as the city of Bethel Heights has ceased to exist. Immediate amendment to the state district court statutes is necessary for the smooth transition of the district courts of the First and Second Judicial Districts. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of

the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

16-17-1101. Legislative findings.

CASE NOTES

ANALYSIS

District Court Clerk.
Reorganization.

District Court Clerk.

Federal district court erred in dismissing plaintiff’s § 1983 action alleging that defendant city violated her constitutional rights by failing to document that she paid certain fines and requesting issuance of a warrant for her arrest, as the complaint stated at least a plausible claim that the Phillips County district court clerk was a city official at the time of the alleged wrongdoing, rather than a state official, in which case the city could be accountable for actions of the clerk that established or carried out an unconstitutional policy or custom of the municipality. *Evans v. City of Helena-West Helena*, 912 F.3d 1145 (8th Cir. 2019).

It was not until after the events alleged in the complaint that Phillips County was

one of several counties that were reorganized as state district courts and served by a state district court judge. Before that time, state law gave cities and counties authority to set salaries for the district court clerk, and the complaint alleged that employees of the district court were hired by the city and paid by the city. *Evans v. City of Helena-West Helena*, 912 F.3d 1145 (8th Cir. 2019).

Reorganization.

Due process violation arising from a district court judge’s installment fee policy could be imputed to the city because the judge was an employee of the city since the Little Rock District Court had not yet been reorganized as a state district court at the times relevant to the case; the Little Rock District Court was not part of the state district court program at the time of the events alleged in the complaint. *City of Little Rock v. Nelson*, 2020 Ark. 34, 592 S.W.3d 633 (2020).

16-17-1107. Salary of judges serving city or county.

CASE NOTES

ANALYSIS

District Court Clerk.
Reorganization.

District Court Clerk.

Federal district court erred in dismissing plaintiff’s § 1983 action alleging that defendant city violated her constitutional rights by failing to document that she paid

certain fines and requesting issuance of a warrant for her arrest, as the complaint stated at least a plausible claim that the Phillips County district court clerk was a city official at the time of the alleged wrongdoing, rather than a state official, in which case the city could be accountable for actions of the clerk that established or carried out an unconstitutional policy or custom of the municipality. *Evans v. City*

of Helena-West Helena, 912 F.3d 1145 (8th Cir. 2019).

It was not until after the events alleged in the complaint that Phillips County was one of several counties that were reorganized as state district courts and served by a state district court judge. Before that time, state law gave cities and counties authority to set salaries for the district court clerk, and the complaint alleged that employees of the district court were hired by the city and paid by the city. *Evans v. City of Helena-West Helena*, 912 F.3d 1145 (8th Cir. 2019).

Reorganization.

Due process violation arising from a district court judge's installment fee policy could be imputed to the city because the judge was an employee of the city since the Little Rock District Court had not yet been reorganized as a state district court at the times relevant to the case; the Little Rock District Court was not part of the state district court program at the time of the events alleged in the complaint. *City of Little Rock v. Nelson*, 2020 Ark. 34, 592 S.W.3d 633 (2020).

16-17-1110. Organization and designation.

The following state district courts shall be organized and designated in numbered judicial districts as follows:

- (1)(A) The First District is composed of Benton County.
 - (B) The First District has thirteen (13) departments as follows:
 - (i) One (1) located in Rogers;
 - (ii) One (1) located in Bentonville;
 - (iii) One (1) located in Siloam Springs;
 - (iv) One (1) located in Gentry;
 - (v) One (1) located in Decatur;
 - (vi) One (1) located in Cave Springs;
 - (vii) One (1) located in Centerton;
 - (viii) One (1) located in Gravette;
 - (ix) One (1) located in Little Flock;
 - (x) One (1) located in Lowell;
 - (xi) One (1) located in Pea Ridge;
 - (xii) One (1) located in Sulphur Springs; and
 - (xiii) One (1) located in Bella Vista.
 - (C)(i) The district is served by four (4) state district court judges.
 - (ii) One (1) judgeship shall be designated as Division 1.
 - (iii) One (1) judgeship shall be designated as Division 2.
 - (iv) One (1) judgeship shall be designated as Division 3.
 - (v) One (1) judgeship shall be designated as Division 4.
 - (D) The assignment of judges to departments under subdivision (1)(B) of this section is determined by the mutual agreement of the state district court judges.
 - (E) For the purpose of venue, the district court boundaries in Benton County are as follows:
 - (i) Division 1 — Rogers District Court:
 - (a) All of District 94, District 95, and District 96 of the House of Representatives as drawn by The Board of Apportionment in 2002;
 - (b) That part of District 98 of the House of Representatives as drawn by The Board of Apportionment in 2002 that is in Benton County Quorum Court District 1 as established by the Benton County Election Commission;

(c) That part of Benton County Quorum Court District 6 as established by the Benton County Election Commission that is in District 96 and District 98 of the House of Representatives as drawn by The Board of Apportionment in 2002; and

(d) All of precinct 43, precinct 44, and precinct 49 as they existed on January 1, 2011;

(ii) Division 2 — Bentonville District Court:

(a) All of District 7, District 8, District 9, and District 10 except for the now-existing precinct 22, of the Benton County Quorum Court as established by the Benton County Election Commission;

(b) All of District 99 of the House of Representatives as drawn by The Board of Apportionment in 2002 except for the now-existing precinct 43, precinct 44, and precinct 49; and

(c) All of precinct 45 as it existed on January 1, 2011;

(iii) Division 3 — Siloam Springs District Court:

(a) All of District 97 of the House of Representatives as drawn by The Board of Apportionment in 2002; and

(b) All of precinct 7, precinct 14, precinct 16, and precinct 17 as they existed on January 1, 2011; and

(iv) Division 4 — Benton County West District Court:

(a) All of Benton County Quorum Court District 11 as established by the Benton County Election Commission; and

(b) All of precinct 6, precinct 15, precinct 18, precinct 19, and precinct 22 as they existed on January 1, 2011.

(F) The First District judges are elected districtwide.

(G) The First District court has districtwide jurisdiction;

(2)(A) The Second District shall be composed of Washington County and the city limits of Springdale that extend into Benton County.

(B) The Second District shall have ten (10) departments as follows:

(i) One (1) located in Springdale;

(ii) One (1) located in Elm Springs;

(iii) One (1) located in Johnson;

(iv) One (1) located in Fayetteville;

(v) One (1) located in Elkins;

(vi) One (1) located in West Fork;

(vii) One (1) located in Greenland;

(viii) One (1) located in Prairie Grove;

(ix) One (1) located in Lincoln; and

(x) One (1) located in Farmington.

(C) The Second District shall be served by four (4) state district court judges:

(i) One (1) judgeship shall be designated as Division 1;

(ii) One (1) judgeship shall be designated as Division 2;

(iii) One (1) judgeship shall be designated as Division 3; and

(iv) One (1) judgeship shall be designated as Division 4.

(D) The presiding judge of the departments under subdivision (2)(B) of this section shall be determined by the mutual agreement of the state district court judges of the Second District.

(E) The Second District judges shall be elected districtwide.

(F) The Second District court shall have districtwide jurisdiction;

(3)(A) The Third District shall be composed of Carroll County and Madison County.

(B) The Third District shall have four (4) departments as follows:

(i) One (1) located in Berryville;

(ii) One (1) located in Eureka Springs;

(iii) One (1) located in Huntsville; and

(iv) One (1) located in Green Forest.

(C) The Third District shall be served by one (1) state district court judge.

(D) The Third District judge shall be elected districtwide.

(E) The Third District court shall have districtwide jurisdiction;

(4)(A) The Fourth District shall be composed of Boone County, the City of Alpena in Carroll County, Newton County, and Searcy County.

(B) The Fourth District has four (4) departments as follows:

(i) One (1) located in Alpena;

(ii) One (1) located in Harrison;

(iii) One (1) located in Marshall; and

(iv) One (1) located in Jasper.

(C) The Fourth District is served by one (1) state district court judge.

(D) The Fourth District judge is elected districtwide.

(E) The Fourth District court has districtwide jurisdiction;

(5)(A) The Fifth District shall be composed of Crawford County.

(B) The Fifth District shall have five (5) departments as follows:

(i) One (1) located in Van Buren;

(ii) One (1) located in Mountainburg;

(iii) One (1) located in Alma;

(iv) One (1) located in Mulberry; and

(v) One (1) located in Dyer.

(C) The Fifth District shall be served by one (1) state district court judge.

(D) The Fifth District judge shall be elected districtwide.

(E) The Fifth District court shall have districtwide jurisdiction;

(6)(A) The Sixth District is composed of the Greenwood District of Sebastian County and the Fort Smith District of Sebastian County.

(B) The Greenwood District of Sebastian County has one (1) district court with one (1) judge and three (3) departments as follows:

(i) One (1) located in Greenwood;

(ii) One (1) located in Barling; and

(iii) One (1) located in Central City.

(C)(i) The Fort Smith District of Sebastian County has one (1) district court with three (3) departments and one (1) judge for each department.

(ii) One (1) judgeship shall be designated Division 1.

(iii) One (1) judgeship shall be designated Division 2.

(iv) One (1) judgeship shall be designated Division 3.

(D) The assignment of judges to departments under subdivision (6)(C) of this section is determined by the mutual agreement of the state district court judges of the Sixth District.

(E) The judge of any district court in Sebastian County shall be elected by the electors of the judicial district in which the court is located.

(F) The jurisdiction of the district courts in Sebastian County shall be limited to the judicial district in which the court is located;

(7)(A) The Eighth District is composed of Pope County.

(B) The Eighth District has five (5) departments as follows:

- (i) One (1) located in Russellville;
- (ii) One (1) located in Atkins;
- (iii) One (1) located in Dover;
- (iv) One (1) located in London; and
- (v) One (1) located in Pottsville.

(C) The Eighth District is served by one (1) state district court judge.

(D) The Eighth District judge is elected districtwide.

(E) The Eighth District court has districtwide jurisdiction;

(8)(A) The Ninth District shall be composed of Faulkner County and Van Buren County.

(B) The Ninth District shall have seven (7) departments as follows:

- (i) One (1) located in Conway;
- (ii) One (1) located in Greenbrier;
- (iii) One (1) located in Guy;
- (iv) One (1) located in Mayflower;
- (v) One (1) located in Vilonia;
- (vi) One (1) located in Clinton; and
- (vii) One (1) located in Damascus.

(C) The Ninth District shall be served by two (2) state district court judges:

- (i) One (1) judgeship shall be designated as Division 1; and
- (ii) One (1) judgeship shall be designated as Division 2.

(D) The assignment of judges to departments under subdivision (8)(B) of this section shall be determined by the mutual agreement of the state district court judges of the Ninth District.

(E) The Ninth District judges shall be elected districtwide.

(F) The Ninth District court shall have districtwide jurisdiction;

(9)(A) The Tenth District is composed of Baxter County and Marion County.

(B) The Tenth District has ten (10) departments as follows:

- (i) One (1) located in Briarcliff;
- (ii) One (1) located in Cotter;
- (iii) One (1) located in Gassville;
- (iv) One (1) located in Lakeview;
- (v) One (1) located in Mountain Home;
- (vi) One (1) located in Norfolk;
- (vii) One (1) located in Salesville;

- (viii) One (1) located in Yellville;
- (ix) One (1) located in Bull Shoals; and
- (x) One (1) located in Flippin.
- (C) The Tenth District is served by one (1) state district court judge.
- (D) The Tenth District judge is elected districtwide.
- (E) The Tenth District court has districtwide jurisdiction;
- (10)(A) The Thirteenth District is composed of Cleburne County.
- (B) The Thirteenth District has four (4) departments as follows:
 - (i) One (1) located in Heber Springs;
 - (ii) One (1) located in Greers Ferry;
 - (iii) One (1) located in Concord; and
 - (iv) One (1) located in Quitman.
- (C) The Thirteenth District is served by one (1) state district court judge.
- (D) The Thirteenth District judge is elected districtwide.
- (E) The Thirteenth District court has districtwide jurisdiction.
- (F) Court costs in the Cleburne County District Court — Quitman Department shall be allocated as described in § 16-10-604(d)(1)(A);
- (11)(A) The Fourteenth District is composed of Independence County.
- (B) The Fourteenth District has one (1) department located in Batesville.
- (C) The Fourteenth District is served by one (1) state district court judge.
- (D) The Fourteenth District judge is elected districtwide.
- (E) The Fourteenth District court has districtwide jurisdiction;
- (12)(A) The Seventeenth District is composed of Greene County.
- (B) The Seventeenth District has two (2) departments as follows:
 - (i) One (1) located in Paragould; and
 - (ii) One (1) located in Marmaduke.
- (C) The Seventeenth District is served by one (1) state district court judge.
- (D) The Seventeenth District judge is elected districtwide.
- (E) The Seventeenth District court has districtwide jurisdiction;
- (13)(A) The Eighteenth District shall be composed of the Chickasawba District and the Osceola District in Mississippi County.
- (B) The Eighteenth District has five (5) departments in the Chickasawba District as follows:
 - (i) One (1) located in Blytheville;
 - (ii) One (1) located in Manila;
 - (iii) One (1) located in Leachville;
 - (iv) One (1) located in Gosnell; and
 - (v) One (1) located in Dell.
- (C) The Eighteenth District has one (1) department located in Osceola in the Osceola District.

(D) The Eighteenth District is served by two (2) state district court judges, with one (1) elected from the Chickasawba District and one (1) elected from the Osceola District.

(E) Each district court within the Eighteenth District only has jurisdiction within each of the district court's respective districts;

(14)(A) The Nineteenth District shall be composed of Craighead County.

(B) The Nineteenth District shall have two (2) departments as follows:

(i) One (1) department located in Jonesboro; and

(ii) One (1) department located in Lake City.

(C) The Nineteenth District shall be served by two (2) state district court judges:

(i) One (1) judgeship shall be designated as Division 1; and

(ii) One (1) judgeship shall be designated as Division 2.

(D) The assignment of judges to departments under subdivision (14)(B) of this section shall be determined by the mutual agreement of the state district court judges of the Nineteenth District.

(E) The Nineteenth District judges shall be elected districtwide.

(F) The Nineteenth District court shall have districtwide jurisdiction;

(15)(A) The Twentieth District is composed of Poinsett County.

(B) The Twentieth District has five (5) departments as follows:

(i) One (1) located in Marked Tree;

(ii) One (1) located in Trumann;

(iii) One (1) located in Tyronza;

(iv) One (1) located in Lepanto; and

(v) One (1) located in Harrisburg.

(C) The Twentieth District is served by one (1) state district court judge.

(D) The Twentieth District judge is elected districtwide.

(E) The Twentieth District court has districtwide jurisdiction;

(16)(A) The Twenty-First District shall be composed of Crittenden County.

(B) The Twenty-First District shall have seven (7) departments as follows:

(i) One (1) located in Earle;

(ii) One (1) located in Gilmore;

(iii) One (1) located in Jennette;

(iv) One (1) located in Jericho;

(v) One (1) located in Marion;

(vi) One (1) located in Turrell; and

(vii) One (1) located in West Memphis.

(C) The Twenty-First District shall be served by one (1) state district court judge.

(D) The Twenty-First District judge shall be elected districtwide.

(E) The Twenty-First District court shall have districtwide jurisdiction;

(17)(A) The Twenty-Second District shall be composed of Lee County and Phillips County.

(B) The Twenty-Second District shall have five (5) departments as follows:

- (i) One (1) located in Marianna;
- (ii) One (1) located in Helena-West Helena;
- (iii) One (1) located in Lake View;
- (iv) One (1) located in Elaine; and
- (v) One (1) located in Marvell.

(C) The Twenty-Second District shall be served by one (1) state district court judge.

(D) The Twenty-Second District judge shall be elected districtwide.

(E) The Twenty-Second District court shall have districtwide jurisdiction;

(18)(A) The Twenty-Third District shall be composed of White County and Prairie County.

(B) The Twenty-Third District shall have thirteen (13) departments as follows:

- (i) One (1) located in Beebe;
- (ii) One (1) located in Searcy;
- (iii) One (1) located in Bald Knob;
- (iv) One (1) located in Bradford;
- (v) One (1) located in Judsonia;
- (vi) One (1) located in McRae;
- (vii) One (1) located in Kensett;
- (viii) One (1) located in Pangburn;
- (ix) One (1) located in Rose Bud;
- (x) One (1) located in Des Arc;
- (xi) One (1) located in Hazen;
- (xii) One (1) located in Biscoe; and
- (xiii) One (1) located in De Valls Bluff.

(C) The Twenty-Third District shall be served by two (2) state district court judges:

- (i) One (1) judgeship shall be designated as Division 1; and
- (ii) One (1) judgeship shall be designated as Division 2.

(D) The assignment of judges to departments under subdivision (18)(B) of this section shall be determined by the mutual agreement of the state district court judges of the Twenty-Third District.

(E) The Twenty-Third District judges shall be elected districtwide.

(F) The Twenty-Third District court shall have districtwide jurisdiction;

(19)(A) The Twenty-Fifth District is composed of St. Francis County.

(B) The Twenty-Fifth District has three (3) departments as follows:

- (i) One (1) located in Forrest City;
- (ii) One (1) located in Madison; and
- (iii) One (1) located in Palestine.

(C) The Twenty-Fifth District is served by two (2) state district court judges.

(D) The Twenty-Fifth District judges are elected districtwide.

(E) The Twenty-Fifth District courts have districtwide jurisdiction;

(20)(A) The Twenty-Sixth District shall be composed of Ashley County.

(B) The Twenty-Sixth District shall have two (2) departments as follows:

(i) One (1) located in Crossett; and

(ii) One (1) located in Hamburg.

(C) The Twenty-Sixth District shall be served by one (1) state district court judge.

(D) The Twenty-Sixth District judge shall be elected districtwide.

(E) The Twenty-Sixth District court shall have districtwide jurisdiction;

(21)(A) The Twenty-Seventh District shall be composed of Desha County and Chicot County.

(B) The Twenty-Seventh District shall have five (5) departments as follows:

(i) One (1) located in Dermott;

(ii) One (1) located in Eudora;

(iii) One (1) located in Lake Village;

(iv) One (1) located in Dumas; and

(v) One (1) located in McGehee.

(C) The Twenty-Seventh District shall be served by one (1) state district court judge.

(D) The Twenty-Seventh District judge shall be elected districtwide.

(E) The Twenty-Seventh District court shall have districtwide jurisdiction;

(22)(A) The Twenty-Eighth District shall be composed of Bradley County and Drew County.

(B) The Twenty-Eighth District shall have two (2) departments as follows:

(i) One (1) located in Monticello; and

(ii) One (1) located in Warren.

(C) The Twenty-Eighth District shall be served by one (1) state district court judge.

(D) The Twenty-Eighth District judge shall be elected districtwide.

(E) The Twenty-Eighth District court shall have districtwide jurisdiction;

(23)(A) The Twenty-Ninth District shall be composed of Jefferson County and Lincoln County.

(B) The Twenty-Ninth District shall have nine (9) departments as follows:

(i) One (1) located in Pine Bluff;

(ii) One (1) located in Altheimer;

(iii) One (1) located in Humphrey;

(iv) One (1) located in White Hall;

- (v) One (1) located in Wabbaseka;
- (vi) One (1) located in Redfield;
- (vii) One (1) located in Star City;
- (viii) One (1) located in Grady; and
- (ix) One (1) located in Gould.

(C) The Twenty-Ninth District shall be served by three (3) state district court judges:

- (i) One (1) judgeship shall be designated as Division 1;
- (ii) One (1) judgeship shall be designated as Division 2; and
- (iii) One (1) judgeship shall be designated as Division 3.

(D) The assignment of judges to departments under subdivision (23)(B) of this section shall be determined by the mutual agreement of the state's district court judges of the Twenty-Ninth District.

(E) The Twenty-Ninth District judge shall be elected districtwide.

(F) The Twenty-Ninth District court shall have districtwide jurisdiction;

(24)(A) The Thirty-First District is composed of Pulaski County.

(B) The Thirty-First District shall have eleven (11) departments that shall be served by eight (8) state district judges. All the following judges shall be elected districtwide and shall have districtwide territorial jurisdiction:

(i) The Jacksonville District Court and the Maumelle District Court shall be served by one (1) judge;

(ii) The Little Rock District Court — First Division shall be served by one (1) judge;

(iii) The Little Rock District Court — Second Division shall be served by one (1) judge;

(iv) The Little Rock District Court — Third Division, the Wrightsville District Court, and the Cammack Village District Court shall be served by one (1) judge;

(v) The North Little Rock District Court — First Division shall be served by one (1) judge;

(vi) The North Little Rock District Court — Second Division shall be served by one (1) judge;

(vii) The Pulaski County District Court shall be served by one (1) judge; and

(viii) The Sherwood District Court shall be served by one (1) judge.

(C)(i) Any judge serving as a local district judge in the Thirty-First District whose base annual salary is paid by a city and whose base annual salary is more than the annual salary paid to a state district judge, upon becoming a state district judge, shall continue to be paid by the city the differential amount between his or her annual salary as of December 31, 2016, and the annual salary established by the state for a state district judge.

(ii) The differential amount as calculated as of December 31, 2016, shall continue as long as the judge continues to serve as a state district judge.

(iii) Upon leaving office of state district court judge, by retirement or otherwise, his or her successor shall be paid only the salary

established for a state district judge without regard to the differential amount provided for in this section;

(25)(A) The Thirty-Second District is composed of Saline County and the City of Alexander in Pulaski County.

(B) The Thirty-Second District has six (6) departments as follows:

- (i) One (1) located in Benton;
- (ii) One (1) located in Bryant;
- (iii) One (1) located in Alexander;
- (iv) One (1) located in Bauxite;
- (v) One (1) located in Haskell; and
- (vi) One (1) located in Shannon Hills.

(C)(i) The Thirty-Second District is served by two (2) state district court judges.

(ii) One (1) judgeship shall be designated as Division 1.

(iii) One (1) judgeship shall be designated as Division 2.

(D) The assignment of judges to departments under subdivision (25)(B) of this section is determined by the mutual agreement of the state district court judges in the Thirty-Second District.

(E) The Thirty-Second District judges are elected districtwide.

(F) The Thirty-Second District court has districtwide jurisdiction;

(26)(A) The Thirty-Third District shall be composed of Grant County and Hot Spring County.

(B) The Thirty-Third District shall have three (3) departments as follows:

- (i) One (1) located in Sheridan;
- (ii) One (1) located in Malvern; and
- (iii) One (1) located in Rockport.

(C) The Thirty-Third District shall be served by one (1) state district court judge.

(D) The Thirty-Third District judge shall be elected districtwide.

(E) The Thirty-Third District court shall have districtwide jurisdiction;

(27)(A) The Thirty-Fourth District shall be composed of Calhoun County, Cleveland County, and Dallas County.

(B) The Thirty-Fourth District shall have four (4) departments as follows:

- (i) One (1) located in Hampton;
- (ii) One (1) located in Rison;
- (iii) One (1) located in Fordyce; and
- (iv) One (1) located in Sparkman.

(C) The Thirty-Fourth District shall be served by one (1) state district court judge.

(D) The Thirty-Fourth District judge shall be elected districtwide.

(E) The Thirty-Fourth District court shall have districtwide jurisdiction;

(28)(A) The Thirty-Fifth District is composed of Union County.

(B) The Thirty-Fifth District has one (1) department located in El Dorado and one (1) state district court judge.

(C) The Thirty-Fifth District judge is elected districtwide.

(D) The Thirty-Fifth District court has districtwide jurisdiction;

(29)(A) The Thirty-Seventh District is composed of Miller County and Lafayette County.

(B) The Thirty-Seventh District has five (5) departments as follows:

(i) One (1) located in Lewisville;

(ii) One (1) located in Bradley;

(iii) One (1) located in Stamps; and

(iv) Two (2) located in Texarkana.

(C) The Thirty-Seventh District is served by one (1) state district court judge.

(D) The Thirty-Seventh District judge is elected districtwide.

(E) The Thirty-Seventh District court has districtwide jurisdiction;

(30)(A) The Thirty-Eighth District shall be composed of Hempstead County and Nevada County.

(B) The Thirty-Eighth District shall have two (2) departments as follows:

(i) One (1) located in Hope; and

(ii) One (1) located in Prescott.

(C) The Thirty-Eighth District shall be served by one (1) state district court judge.

(D) The Thirty-Eighth District judge shall be elected districtwide.

(E) The Thirty-Eighth District court shall have districtwide jurisdiction; and

(31)(A) The Fortieth District shall be composed of Clark County.

(B) The Fortieth District shall have four (4) departments as follows:

(i) One (1) located in Arkadelphia;

(ii) One (1) located in Amity;

(iii) One (1) located in Caddo Valley; and

(iv) One (1) located in Gurdon.

(C) The Fortieth District shall be served by one (1) state district court judge.

(D) The Fortieth District judge shall be elected districtwide.

(E) The Fortieth District court shall have districtwide jurisdiction.

History. Acts 2011, No. 1219, § 9; 2015, No. 1081, § 1; 2017, No. 723, § 3; 2019, No. 935, § 1; 2021, No. 87, § 1.

CASE NOTES

Reorganization.

In a private probation company's 42 U.S.C. § 1983 action challenging two Craighead County district court judges' implementation of an amnesty program forgiving probation fees, the Craighead County district court judges became em-

ployees of the State before the events in the case and thus their actions could not be imputed to the county or city defendants. *Justice Network Inc. v. Craighead Cty.*, 931 F.3d 753 (8th Cir. 2019).

Due process violation arising from a district court judge's installment fee

policy could be imputed to the city because the judge was an employee of the city since the Little Rock District Court had not yet been reorganized as a state district court at the times relevant to the case; the

Little Rock District Court was not part of the state district court program at the time of the events alleged in the complaint. *City of Little Rock v. Nelson*, 2020 Ark. 34, 592 S.W.3d 633 (2020).

CHAPTER 22
ATTORNEYS AT LAW

SUBCHAPTER 3 — RIGHTS AND LIABILITIES

16-22-308. Attorney’s fees in certain civil actions.

CASE NOTES

ANALYSIS

In General.
Fees Denied.
Tort Action.

In General.

Power to award attorney’s fees under this section does not mean that the court can do so without first informing its discretion as to the reasonableness of the requested amount; in a wrongful termination case where the employer prevailed, the circuit court abused its discretion when it awarded a substantial attorney’s fee in the employer’s favor before receiving any evidence regarding the work counsel had performed and before giving the employees a meaningful opportunity to challenge the fee. *McCabe v. Wal-Mart Assocs.*, 2019 Ark. App. 566, 591 S.W.3d 335 (2019).

Fees Denied.

Where sister filed suit to dissolve a family farming partnership, the circuit

court did not abuse its discretion by denying two partners’ requests for attorney’s fees against the sister where the requesting partners never submitted time records or actual fees charged and paid. *Hitt v. Lyle*, 2020 Ark. App. 124, 596 S.W.3d 540 (2020).

Tort Action.

Trial court properly denied a request for attorney’s fees under this section where the litigation started with the property owners’ complaint to quiet title and the lender’s counterclaim for foreclosure based on the mortgage on the owners’ home, thereafter, the lender sought damages on a single claim of breach of contract or unjust enrichment based on the owners’ loans, the remainder of the lender’s claims sounded in tort, including several alleged instances of breach of fiduciary duty, conversion, negligence, and fraud and deceit, and thus the litigation primarily sounded in tort. *Thomason Invs., LLC v. Huddleston*, 2020 Ark. App. 500 (2020).

16-22-309. Attorney’s fees in actions lacking justiciable issue.

CASE NOTES

Justiciable Issue.

In an easement dispute between adjoining landowners dismissed on *res judicata* grounds, the award of attorney’s fees was reversed because precedent requires that the circuit court find a “complete absence

of a justiciable issue” as a prerequisite to an award of attorney’s fees under this section, which was not done in this case. *Shonting v. Connor*, 2020 Ark. App. 154, 597 S.W.3d 129 (2020).

SUBTITLE 3. JURIES AND JURORS**CHAPTER 31****JUROR QUALIFICATIONS AND EXEMPTIONS****16-31-102. Disqualifications.****CASE NOTES****Ability to Understand English.**

Circuit court was within its discretion to excuse a juror because, during voir dire, the juror approached the bench and expressed to the judge that he did not know how to write English and could speak and read English “just a little bit”; when asked if he spoke some English but did not

understand all the words, the juror replied that was correct; and, in response to questions by the court, the juror explained that his limited knowledge of English would impact his ability to understand the evidence in the case. *Doll v. State*, 2020 Ark. App. 153, 598 S.W.3d 47 (2020).

CHAPTER 32**SELECTION AND ATTENDANCE****SUBCHAPTER 1 — GENERAL PROVISIONS****16-32-103. Master list.****CASE NOTES**

Cited: *Jenner v. State*, 2021 Ark. App. 26 (2021).

16-32-106. Summons of petit jurors.**CASE NOTES****Prosecutorial Campaigning.**

First-degree murder conviction was reversed because it was an abuse and exploitation of the judicial system and the fundamental civic responsibility of jury service for a prosecutor to campaign for a judicial position in a courthouse full of potential jurors mandated to attend a

trial she was prosecuting. Attorneys must strive to avoid the appearance of impropriety, and defendant had valid reason to believe that his case was being tried before a jury who had been conditioned to give credibility to the prosecutor’s argument. *Stanton v. State*, 2020 Ark. 418 (2020).

SUBTITLE 4. EVIDENCE AND WITNESSES

CHAPTER 42

SEXUAL OFFENSES

16-42-101. Admissibility of evidence of victim’s prior sexual conduct — Definition.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Lacon Marie Smith, Note: When the Pillow Talks: Arkansas’s Rape Shield Statute Bars DNA Evidence Excluding the Defen-

dant as the Source of Semen (Thacker v. State), 40 U. Ark. Little Rock L. Rev. 131 (2017).

CASE NOTES

ANALYSIS

Exclusion Upheld.
Preservation.

Exclusion Upheld.

Three of the pieces of evidence defendant sought to admit fell squarely within this section, the rape-shield statute, and were properly excluded because the victim denied making the allegation that she performed oral sex on a boy at school and she stated that the allegations against other men were true. Burns v. State, 2020 Ark. App. 207, 599 S.W.3d 332 (2020).

Although the diary entries did not fall squarely within this section, defendant did not show prejudice from their exclusion because the diary entries would have been relevant only to attack the victim’s credibility, and defendant did that by vigorously cross-examining the victim; it was impossible to say that admission of the two diary entries would have changed the outcome because the victim’s testimony alone was sufficient to support defendant’s convictions. Burns v. State, 2020 Ark. App. 207, 599 S.W.3d 332 (2020).

Circuit court did not commit reversible error in denying defendant’s rape-shield motion as no evidence showed that a prior act ever occurred, and defendant was permitted to question a medical expert in detail about his old injury theory, making extensive use of the medical excerpts that were the subject of the pretrial hearing. McKee v. State, 2020 Ark. 327, 608 S.W.3d 584 (2020).

Defendant’s motion to admit a prior victim statement was properly denied as there was no indication that either of the alleged prior instances involved penetration, and thus the statement’s independent relevance or admissibility under subsection (c) of this section was not established. McKee v. State, 2020 Ark. 327, 608 S.W.3d 584 (2020).

Preservation.

Defendant failed to follow the statutory procedure for establishing relevancy and admissibility of evidence excluded by the Rape Shield Act and the court prohibited defendant from addressing the issue on appeal. Dillard v. State, 2020 Ark. App. 419 (2020).

CHAPTER 46

DOCUMENTARY EVIDENCE GENERALLY

SUBCHAPTER 1 — GENERAL PROVISIONS

16-46-105. Records of and testimony before committees reviewing and evaluating quality of medical or hospital care.

CASE NOTES

Construction.

Circuit court abused its discretion in denying a terminated surgeon's motions to compel production from the hospital of the peer review records of similarly situated physicians on the medical staff and the identities of physicians who complained about his treatment of patients; the disputed discovery fit within the plain language of subdivision (b)(2) of this section because the discovery sought was in a legal action brought by a medical practitioner subjected to disciplinary action by a hospital medical-staff or medical-review committee. *Williams v. Baptist Health*, 2020 Ark. 150, 598 S.W.3d 487 (2020).

The exception in subdivision (b)(2) of this section does not limit a terminated physician to obtaining only the medical records and documents reviewed and used in the physician's own peer-review proceedings. *Williams v. Baptist Health*, 2020 Ark. 150, 598 S.W.3d 487 (2020).

Circuit court's error in denying a surgeon's motions to compel production was

not harmless as to the discrimination and tortious interference claims because the discovery could have assisted the surgeon in showing malice to rebut the medical providers' assertions of statutory immunity; the information needed by the medical providers to refute the discrimination claim could also have enabled the surgeon to withstand summary judgment on it. *Williams v. Baptist Health*, 2020 Ark. 150, 598 S.W.3d 487 (2020).

Circuit court's error in denying a surgeon's motions to compel production was harmless as to the surgeon's other claims; the evidence would not have rebutted the medical providers' argument that the retaliation claim failed as a matter of law; the constitutional claims alleged improper conduct in the medical board proceedings after the adverse action taken by the hospital; and the report on which the defamation claim was based accurately reflected the adverse action. *Williams v. Baptist Health*, 2020 Ark. 150, 598 S.W.3d 487 (2020).

16-46-107. Identification of medical bills at trial.

CASE NOTES

Necessity of Medical Treatment.

In a slip and fall case, the circuit court erred when it allowed plaintiff to testify to the necessity of her medical treatment where much of the treatment, including her surgeries, occurred more than a year after her fall. Thus, her testimony, standing alone, could not establish that the

necessity of the treatment was causally related to her fall. However, there was no prejudice as the treating chiropractor's testimony, standing alone, was sufficient to establish causation. *Dollar Gen. Corp. v. Elder*, 2020 Ark. 208, 600 S.W.3d 597 (2020).

16-46-108. Photographically reproduced records admissible in court.

CASE NOTES

Cited: Clater v. State, 2020 Ark. App. 92 (2020).

SUBCHAPTER 3 — HOSPITAL RECORDS ACT

16-46-306. Admissibility of copies and affidavits.

CASE NOTES

Cited: Garner v. Ark. Dep’t of Human Servs., 2020 Ark. App. 328, 603 S.W.3d 858 (2020).

SUBTITLE 5. CIVIL PROCEDURE GENERALLY

CHAPTER 55

GENERAL PROVISIONS

SUBCHAPTER 2 — CIVIL JUSTICE REFORM ACT OF 2003

16-55-201. Modification of joint and several liability.

CASE NOTES

ANALYSIS

Construction.
Discovery.

Construction.

The language of this section is clear; it speaks in terms of the allocation of fault among the “defendants” to the action but is silent as to the allocation of nonparty fault. Instead, the Uniform Contribution Among Tortfeasors Act, § 16-61-201 et seq., addresses the allocation of nonparty fault and it does not allow for the apportionment of fault to an immune nonparty employer. *Indus. Iron Works, Inc. v. Hodge*, 2020 Ark. App. 56, 595 S.W.3d 9 (2020).

Discovery.

It was error to grant at this point in the case defendant subcontractor’s motion to

compel discovery of the confidential settlement agreement between plaintiff and defendant general contractor that resulted from mediation, when the subcontractor sought contribution and apportionment of fault, because (1) any right of contribution does not arise until one joint tortfeasor pays more than the tortfeasor’s share of liability, and no damages had been awarded yet, and (2) it was error to find the general contractor and subcontractor were joint tortfeasors before any evidence was presented. Contrary to plaintiff’s argument, however, the Civil Justice Reform Act, § 16-55-201 et seq., did not eliminate contribution among “joint tortfeasors”. *Wynne-Ark., Inc. v. Richard Baughn Constr.*, 2020 Ark. App. 140, 597 S.W.3d 114 (2020).

CHAPTER 56

LIMITATION OF ACTIONS

SUBCHAPTER 1 — GENERAL PROVISIONS

16-56-105. Actions with limitation of three years.

CASE NOTES

ANALYSIS

Breach of Fiduciary Duty.
Contracts Generally.
—Real Property Improvements.
Decedents' Estates.
Goods and Chattel.
Pleadings.
Tolling.

Breach of Fiduciary Duty.

In an estate dispute where a sister sued her brother, who had held a power of attorney for the father, the circuit court did not err in finding that the sister's claim for breach of fiduciary duty was barred by the three-year statute of limitations, because, *inter alia*, a previous appellate decision had rejected the argument that the entire length of the fiduciary relationship should be considered and the sister did not offer any authority to support her suggestion that being a signatory on a bank account gives rise to a fiduciary relationship or that any such fiduciary relationship would have extended to her. *Ellis v. Thompson*, 2019 Ark. App. 579, 590 S.W.3d 774 (2019).

Contracts Generally.

—Real Property Improvements.

General contractor's claims against a masonry subcontractor were time-barred because the contractor filed suit after the three-year period had expired; the failure to use a bonding agent in the mortar in accordance with the manufacturer's specifications constituted a material breach of the contract and started the running of the statute of limitations. *C&R Constr. Co. v. Woods Masonry & Repair, LLC*, 2020 Ark. App. 105, 596 S.W.3d 35 (2020).

Decedents' Estates.

In a will contest, the trial court erred in imposing the constructive trust because

the three-year statute of limitations for breach of a fiduciary duty expired before appellee filed his petition for a constructive trust; the limitations clock started running when the alleged undue influence occurred and not at the repudiation or disavowal of any false promise or trust (however, the setting aside of the will was affirmed). *Smith v. Smith (In re Estate of Smith)*, 2020 Ark. App. 113, 597 S.W.3d 65 (2020).

Goods and Chattel.

In a replevin action to recover personal property that remained on real property that was sold at a foreclosure sale, the circuit court did not err by finding that the replevin claim was not barred by the three-year statute of limitations in subdivision (6) of this section because the evidence supported a finding that defendants' possession of the front end loader was not adverse; one defendant and another witness testified they had told plaintiff's owner that he could retrieve the personal property after the sale of the real property, and emails between the parties showed that defendant recognized plaintiff's ownership interest in the property. *Hermitage Newark, LLC v. Ark. Sand Co.*, 2020 Ark. App. 214, 599 S.W.3d 654 (2020).

Pleadings.

Circuit court did not abuse its discretion when it dismissed a personal representative's wrongful death complaint as being untimely filed because the original pro se complaint filed by plaintiff, a nonlawyer, as the personal representative of the estate constituted the unauthorized practice of law and was a nullity and could not be amended; by the time an attorney filed a complaint, more than three years had passed since the decedent's death, and the personal representative's claims were barred by the three-year statute of limita-

tions. *Henson v. Craddock*, 2020 Ark. 24, 593 S.W.3d 10 (2020).

Where homeowners mistakenly brought suit as individuals rather than in the name of the corporation that owned the real property, the circuit court did not err in denying their motion to substitute the corporation as the real party in interest because if the circuit court had granted the motion for substitution, it would have constituted a new complaint and would have been after the statute of limitations had run; relation back did not apply. *C&R Constr. Co. v. Woods Masonry & Repair, LLC*, 2020 Ark. App. 105, 596 S.W.3d 35 (2020).

16-56-111. Notes and instruments in writing and other writings.

CASE NOTES

ANALYSIS

Debts.
—Acceleration Clauses.

Debts.
—Acceleration Clauses.

Appellants were not entitled to enforce the promissory note and mortgage as they accelerated the note on March 17, 2011, and filed a foreclosure complaint more than five years later on July 26, 2016; and

Tolling.
Former bank executive’s annuity claims against the bank, which were barred by the three-year statute of limitations, were not saved by the doctrine of equitable tolling; while it may not have been beneficial for plaintiff as an executive officer to have filed a complaint to enforce the annuity agreement, there was no allegation that he was prevented from doing so and no allegation of fraudulent concealment. *Loftin v. First State Bank*, 2020 Ark. App. 66, 596 S.W.3d 16 (2020).

they admitted that the applicable statute of limitations was five years, and that it was a sufficient defense that they had not brought the suit within the period of limitation prescribed by a law. Further, appellants’ argument that the prior acceleration, performed on March 17, 2011, was abandoned failed as there was no clear intent to abandon the acceleration. *Ocwen Loan Servicing, LLC v. Oden*, 2020 Ark. App. 384, 609 S.W.3d 410 (2020).

16-56-125. Actions against tortfeasors whose identity is unknown.

CASE NOTES

Relation to Rules of Procedure.
In a medical malpractice action, a determination of whether this section applied was unnecessary because even if it did, the patient failed to meet the requirements of Ark. R. Civ. P. 15(c) where she failed to show that the members of the patient-treatment team had timely notice such that they would not have been prejudiced in defending against the suit. Spe-

cifically, the amended complaint, although filed within the 120 days required by the rule, was answered outside the 120 days, there were no other facts indicating they had timely notice, and under the reasoning of case law, the court could not presume that they had notice because their employer had notice. *Freeman v. Conway Reg’l Med. Ctr.*, 2020 Ark. App. 488, 612 S.W.3d 193 (2020).

16-56-126. Commencement of new action or filing mandate after nonsuit or arrest or reversal of judgment.

CASE NOTES

ANALYSIS

Dismissal Without Prejudice.
Good Faith.

Dismissal Without Prejudice.

Circuit court's decision to dismiss a complaint without prejudice, rather than with prejudice, was affirmed where an injured driver and her husband timely filed their complaint and served the driver who rear-ended the car behind them via warning order, but on appeal of the default judgment entered against that driver, the service was held imperfect under Ark. R. Civ. P. 4 due to the insufficiency of the diligent-inquiry affidavit. Under case law, the injured driver and her husband, who filed their case during the limitations period and served it promptly but imperfectly, deserved the grace period

provided by this section (the "savings" statute) to refile their case and serve it properly. *Thomas v. Robinson*, 2020 Ark. App. 103, 596 S.W.3d 531 (2020).

Good Faith.

Injured persons were not entitled to relief under this section as they had not made a good-faith effort to serve the driver at the address he had provided to them in his interrogatories. Instead, they served him at his mother's residence where he had not lived for over one year and his only tie to the residence was that he had registered to vote using that address over five years ago. Substantial compliance under Ark. R. Civ. P. 4(k) was not preserved for appellate review. *White v. Owen*, 2020 Ark. App. 356, 609 S.W.3d 1 (2020), vacated, 2021 Ark. 31 (2021).

CHAPTER 61

PARTIES

SUBCHAPTER 2 — UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT

16-61-201. Definitions.

CASE NOTES

ANALYSIS

Discovery.
Joint Tortfeasors.

Discovery.

It was error to grant at this point in the case defendant subcontractor's motion to compel discovery of the confidential settlement agreement between plaintiff and defendant general contractor that resulted from mediation, when the subcontractor sought contribution and apportionment of fault, because (1) any right of contribution does not arise until one joint tortfeasor pays more than the tortfeasor's share of liability, and no damages had been awarded yet, and (2) it was error to find the general contractor and subcontractor

were joint tortfeasors before any evidence was presented. Contrary to plaintiff's argument, however, the Civil Justice Reform Act, § 16-55-201 et seq., did not eliminate contribution among "joint tortfeasors". *Wynne-Ark., Inc. v. Richard Baughn Constr.*, 2020 Ark. App. 140, 597 S.W.3d 114 (2020).

Joint Tortfeasors.

In employee's products liability action against the manufacturer of the product that injured him while he was working, the circuit court properly precluded the manufacturer's attempt to allocate fault to the nonparty employer in its amended answer; because the employer was clothed with immunity from liability in tort under the exclusive-remedy provision of the

workers' compensation statutes, the employer could not have joint or several "liability" in tort and therefore did not meet the definition of "joint tortfeasor" in the Uniform Contribution Among Tortfea-

sors Act, § 16-61-201 et seq., or fall within the confines of that act. *Indus. Iron Works, Inc. v. Hodge*, 2020 Ark. App. 56, 595 S.W.3d 9 (2020).

16-61-202. Right of contribution — Accrual — Pro rata share.

CASE NOTES

ANALYSIS

Immune Employer.
Joint Tortfeasors.

Immune Employer.

In employee's products liability action against the manufacturer of the product that injured him while he was working, the circuit court properly precluded the manufacturer's attempt to allocate fault to the nonparty employer in its amended answer; because the employer was clothed with immunity from liability in tort under the exclusive-remedy provision of the workers' compensation statutes, § 11-9-105, the employer could not have joint or several "liability" in tort and therefore did not meet the definition of "joint tortfeasor" in the Uniform Contribution Among Tortfeasors Act, § 16-61-201 et seq., or fall within the confines of that act. *Indus. Iron Works, Inc. v. Hodge*, 2020 Ark. App. 56, 595 S.W.3d 9 (2020).

The Uniform Contribution Among Tortfeasors Act, § 16-61-201 et seq., does not allow for the apportionment of fault to an immune nonparty employer. *Indus. Iron Works, Inc. v. Hodge*, 2020 Ark. App. 56, 595 S.W.3d 9 (2020).

The language of § 16-55-201 is clear; it

speaks in terms of the allocation of fault among the "defendants" to the action but is silent as to the allocation of nonparty fault. Instead, the Uniform Contribution Among Tortfeasors Act, § 16-61-201 et seq., addresses the allocation of nonparty fault. *Indus. Iron Works, Inc. v. Hodge*, 2020 Ark. App. 56, 595 S.W.3d 9 (2020).

Joint Tortfeasors.

It was error to grant at this point in the case defendant subcontractor's motion to compel discovery of the confidential settlement agreement between plaintiff and defendant general contractor that resulted from mediation, when the subcontractor sought contribution and apportionment of fault, because (1) any right of contribution does not arise until one joint tortfeasor pays more than the tortfeasor's share of liability, and no damages had been awarded yet, and (2) it was error to find the general contractor and subcontractor were joint tortfeasors before any evidence was presented. Contrary to plaintiff's argument, however, the Civil Justice Reform Act, § 16-55-201 et seq., did not eliminate contribution among "joint tortfeasors". *Wynne-Ark., Inc. v. Richard Baughn Constr.*, 2020 Ark. App. 140, 597 S.W.3d 114 (2020).

CHAPTER 62

SURVIVAL AND ABATEMENT OF ACTIONS

16-62-102. Wrongful death actions — Survival.

CASE NOTES

Statute of Limitations.

Circuit court did not abuse its discretion when it dismissed a personal representative's wrongful death complaint as being untimely filed because the original pro se complaint filed by plaintiff, a nonlawyer,

as the personal representative of the estate constituted the unauthorized practice of law and was a nullity and could not be amended; by the time an attorney filed a complaint, more than three years had passed since the decedent's death, and the

personal representative's claims were barred by the three-year statute of limita-

tions. *Henson v. Cradduck*, 2020 Ark. 24, 593 S.W.3d 10 (2020).

CHAPTER 66

EXECUTION OF JUDGMENTS

SUBCHAPTER 6 — UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

16-66-602. Filing and status of foreign judgments.

CASE NOTES

ANALYSIS

Entitlement to Registration.
Hearing.

Entitlement to Registration.

It was proper to deny a horse owner's motion to dismiss a company's application for registration of a default judgment obtained by the company in Delaware court against the horse owner, who was an Arkansas resident, as the Delaware court properly exercised personal jurisdiction over the horse owner. The evidence supported the conclusion that the horse owner was in fact transacting business in Delaware, the horse owner utilized the company's transportation services to move his horses to and from the Delaware Park Racetrack, and it was clear that the horse owner had at least one employee in Delaware helping him conduct business within the state; moreover, foreign judgments are presumed valid. *Hessee v. Simoff Horse Transp., LLC*, 2020 Ark. App. 229, 599 S.W.3d 694 (2020).

Uniform Enforcement of Foreign Judgments Act, § 16-66-601 et seq., requires only that the foreign judgment be regular on its face and duly authenticated to be subject to registration; the foreign judgment is conclusive, except for the defenses of fraud in the procurement or want of jurisdiction in the rendering court, and in this case, the Arkansas circuit court must have implicitly found that the Delaware court had jurisdiction because that was the only way the registration of the foreign judgment could be proper. Although concise, the circuit court's ruling contained the only finding needed — that the

company complied with the laws of Delaware in obtaining its judgment. *Hessee v. Simoff Horse Transp., LLC*, 2020 Ark. App. 229, 599 S.W.3d 694 (2020).

There was no impediment to entry of a default judgment obtained by a company in Delaware court against a horse owner, who was an Arkansas resident, because service of process was accomplished in the manner necessary to permit the entry of a default judgment under Delaware law, the Delaware default judgment was founded on Delaware law regarding personal jurisdiction, and the Delaware court expressly ruled that the horse owner had received proper service of process. While Arkansas law does not provide for service by first class mail when the certified letter is returned "unclaimed", Delaware law does. *Hessee v. Simoff Horse Transp., LLC*, 2020 Ark. App. 229, 599 S.W.3d 694 (2020).

Hearing.

No hearing was mandated on a horse owner's motion to dismiss a company's application for registration of a foreign default judgment against him, as the law of Delaware allowed a Delaware court to award damages based on affidavits, the record on appeal contained no request for a hearing and thus the horse owner waived any right he might have had for a hearing, there was no indication that the Arkansas court failed to consider the horse owner's written response, and the Delaware court had before it sufficient evidence to determine the amount of damages. *Hessee v. Simoff Horse Transp., LLC*, 2020 Ark. App. 229, 599 S.W.3d 694 (2020).

SUBTITLE 6. CRIMINAL PROCEDURE GENERALLY**CHAPTER 88****JURISDICTION AND VENUE****SUBCHAPTER 1 — GENERAL PROVISIONS****16-88-101. Jurisdiction of courts for certain offenses generally.****CASE NOTES****District Courts.**

City was properly granted summary judgment on a personal representative's claim that the Ashley County District Court lacked jurisdiction to conduct a first appearance for the decedent who was arrested and charged in a separate county or judicial district; subsection (c) of this section meant that any Arkansas district court had authority to perform pretrial

functions as necessary and as authorized by the Arkansas Rules of Criminal Procedure, and Ark. R. Crim. P. 8.1 was interpreted to sweep broadly for first appearances. Given that the county district judge had jurisdiction and authority to conduct the first appearance, the constitutional claim necessarily failed. *Green v. Byrd*, 972 F.3d 997 (8th Cir. 2020).

CHAPTER 89**TRIAL AND VERDICT****16-89-111. Evidence generally.****CASE NOTES****ANALYSIS****Accomplice Testimony.**

—Corroboration.

—Corroboration Not Shown.

Corpus Delicti Rule.

Accomplice Testimony.**—Corroboration.**

Evidence was sufficient to convict defendant of capital murder with the premeditated and deliberated purpose of causing the victim's death because the accomplices' testimony was corroborated by defendant's statement to police, forensic evidence, and testimony from other witnesses; the medical examiner (ME) testified that the victim died from internal blood loss caused by multiple blunt force injuries; defendant instructed the accomplices to beat the victim with baseball bats; the ME found oil on the victim's

inner thighs and in her vagina, which was consistent with chainsaw oil; and defendant told the accomplices to use chainsaw oil as a lubricant and to shove a baseball bat inside the victim's vagina. *Chumley v. State*, 2019 Ark. 383, 590 S.W.3d 154 (2019).

—Corroboration Not Shown.

Evidence was insufficient to support defendant's convictions for aggravated robbery and first-degree felony murder because there was no evidence that the victim was the victim of an intended theft apart from the accomplice's testimony. The State showed only that defendant was with the accomplice and another alleged participant an hour before the victim died and that defendant was with another person in a crowd of gawkers at the location where the victim died. *Clark v. State*, 2019 Ark. App. 455, 588 S.W.3d 64 (2019).

Corpus Delicti Rule.

Evidence was sufficient to sustain defendant's convictions for second-degree murder under the corpus delicti rule, subsection (d) of this section, because defendant's confession was sufficiently corroborated; defendant confessed to killing the victims with a hammer and then dispos-

ing of the murder weapon, the victims' bodies were recovered, and both of the victims died from blunt-force trauma to the head, which was not an accident according to a medical examiner who performed autopsies of the victims. *Watts v. State*, 2020 Ark. App. 218, 600 S.W.3d 618 (2020).

16-89-115. Documents — Production where in possession of state.**CASE NOTES****Prosecutor's Notes.**

Circuit court was not required to order the State to disclose the prosecutor's notes to defendant under this section where the notes from the interview of the victim were not "substantially verbatim", but

contained opinions and observations of the victim's behavior and demeanor, and clearly did not encompass everything the victim said. *Harper v. State*, 2020 Ark. App. 4, 592 S.W.3d 708 (2020).

16-89-125. Deliberation of jury.**CASE NOTES****ANALYSIS****Noncompliance.**

—Prejudice Not Found.

Subsequent Instructions.

—Bailiff.

—Presence of Defendant.

Noncompliance.**—Prejudice Not Found.**

While the court did not comply with the statutory requirement to call the jury into open court to answer any question the jury might have, the State rebutted the presumption of prejudice where defense counsel was aware of the jury's two notes to the court and agreed with the responses to them. *Terry v. State*, 2020 Ark. 202, 600 S.W.3d 575 (2020).

Where the trial court violated this section by not bringing the jury into open court when the jury asked a question, the State overcame the presumption of prejudice from the trial court's noncompliance with this section as there was no risk of misinformation being communicated to the jury because the trial court discussed the jury's question and the response with counsel; defense counsel made no objection to the wording of the response; the trial court did not give any information to

the jury; the trial court did not provide the jury evidence, answer a question about the evidence, or inform the jury on a point of law; and the Supreme Court would not speculate as to how the jury reacted when it received the trial court's counterquestion. *Combs v. State*, 2020 Ark. 379 (2020).

Subsequent Instructions.**—Bailiff.**

Where the jury was given verdict forms for rape and attempted rape during the penalty phase and the bailiff counseled the jury foreman to sign both forms, the bailiff testified that the jury had already found defendant guilty of rape and had signed the rape verdict form when he spoke with the jury foreman; thus, the bailiff's instruction could not have infected the jury's deliberations and, in addition, the circuit court polled each jury member individually concerning the verdict. Accordingly, no prejudice arose from the bailiff's comments to the foreman. *Garcia-Chicol v. State*, 2020 Ark. 148, 597 S.W.3d 631 (2020).

—Presence of Defendant.

Remand to settle the record, pursuant to Ark. R. App. P. Crim. 4(a) and Ark. R. App. P. Civ. 6(e), was required where due

to the lack of a verbatim record, it was impossible to determine whether defendant and his counsel were present when the circuit court ordered the jury notes marked as court’s exhibits and received

the jury notes into evidence. Likewise, the appellate court was unable to determine compliance or noncompliance with subsection (e) of this section. *Terry v. State*, 2019 Ark. 342 (2019).

16-89-128. Polling of jury members.

CASE NOTES

Cited: *Garcia-Chicol v. State*, 2020 Ark. 148, 597 S.W.3d 631 (2020).

CHAPTER 90
JUDGMENT AND SENTENCE GENERALLY

SUBCHAPTER 1 — GENERAL PROVISIONS

16-90-111. Correction or reduction of sentence.

CASE NOTES

Timeliness.

Since the portion of this section that provides a means to challenge a sentence at any time on the ground that the sentence was illegal on its face remains in

effect despite Ark. R. Crim. P. 37.2(c), appellant’s argument that his sentence was illegal on its face was not untimely. *Neely v. State*, 2020 Ark. App. 547 (2020).

16-90-115. Suspension of sentence.

CASE NOTES

Cited: *City of Little Rock v. Nelson*, 2020 Ark. 34, 592 S.W.3d 633 (2020).

16-90-120. Felony with firearm.

CASE NOTES

Sentencing.

Where defendant was found guilty of first-degree murder and 29 counts of terroristic acts and the jury found beyond a reasonable doubt in the guilt phase that defendant or an accomplice employed a firearm as a means of committing first-degree murder but in the sentencing phase sentenced defendant to firearm en-

hancements in connection with the counts for terroristic acts, the 29 one-year sentences imposed as firearm enhancements were reversed because the jury did not find beyond a reasonable doubt that defendant employed a firearm as a means of committing terroristic acts. *Ellis v. State*, 2019 Ark. 286, 585 S.W.3d 661 (2019).

SUBCHAPTER 11 — RIGHTS OF VICTIMS OF CRIME**16-90-1112. Victim impact statement.****CASE NOTES****Resentencing.**

Circuit court erred in resentencing defendant to life in prison after his original life-without-parole sentence for juvenile crimes was vacated due to *Miller v. Alabama*, 567 U.S. 460 (2012), because evidence of defendant's original sentence had no probative value and was inherently prejudicial under Ark. R. Evid. 403. The jury not only could have had a diminished

sense of responsibility, but also might have improperly considered the procedural history of the case in determining the appropriate punishment, particularly given the testimony of the victim's family as to the adverse effect that the overturning of defendant's sentence and the resentencing trial had on them. *Kitchell v. State*, 2020 Ark. 102, 594 S.W.3d 848 (2020).

SUBCHAPTER 14 — COMPREHENSIVE CRIMINAL RECORD SEALING ACT OF 2013**16-90-1413. Procedure for sealing of records.****CASE NOTES****Denial of Petition.**

Circuit court did not misinterpret the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq., by denying the petition to seal a misdemeanor

conviction because the statute was clear that the circuit court may, in its discretion, grant the petition when no opposition is filed. *Talley v. State*, 2020 Ark. App. 461 (2020).

16-90-1417. Effect of sealing.**CASE NOTES****Eligibility for Elective Office.**

Circuit court properly declared an alderman-elect ineligible to run for public office because he had pled guilty to "voting more than once in an election" in violation of § 7-1-103; the framers of Ark. Const., Art. 5, § 9 intended for an "infamous crime" to include crimes involving elements of deceit, dishonesty, impugning on the integrity of the office, and directly

impacting the person's ability to serve as an elected official; and, with the inclusion of § 7-1-103(b)(2)(A), the General Assembly deliberately chose to exclude from public office all persons found guilty of election-related misdemeanors, regardless of whether the record was later sealed. *Pruitt v. Smith*, 2020 Ark. 382, 610 S.W.3d 660 (2020).

CHAPTER 93
PROBATION AND PAROLE

SUBCHAPTER 3 — PROBATION AND SUSPENDED IMPOSITION OF SENTENCE

16-93-303. Probation — First time offenders — Procedure.

CASE NOTES

Violation of Probation.

Circuit court correctly refused to dismiss defendant's prior case under the First Offender Act, § 16-93-301 et seq.; although the only order in that case was the order placing defendant on probation, that was not dispositive of whether she successfully completed the terms of her probation. Defendant had not fulfilled the terms and conditions of her probation, as evidenced by her guilty plea to possession of methamphetamine in a later case while

she was on probation in the prior case, and the fact that the revocation petition was nolle prossed was of no consequence in answering that question. The fact that the form order sealing defendant's prior case contained similar language was not dispositive in light of her guilty plea in the later case and the lengthy order denying dismissal of the prior case entered by the circuit court just minutes after the order sealing the prior case was entered. *Robinet v. State*, 2021 Ark. App. 48 (2021).

16-93-307. Probation generally — Revocation hearings.

CASE NOTES

Right to Confront Witnesses.

At the probation revocation hearing, once defendant invoked his confrontation rights regarding a police officer's notes, precedent required that the circuit court enforce those rights absent a specific find-

ing of good cause, but the circuit court did not make a good cause finding. Thus, the Confrontation Clause was violated, and the error was not harmless. *Pope v. State*, 2020 Ark. App. 413, 607 S.W.3d 512 (2020).

16-93-308. Probation generally — Revocation — Definition.

CASE NOTES

ANALYSIS

- Jurisdiction.
- Procedure.
- Revocation Improper.
- Revocation Proper.
- Failure to Pay Restitution.
- Failure to Report.
- New Offenses.
- Right to Confront Witnesses.
- Sentence After Revocation.

Jurisdiction.

Circuit court lost jurisdiction to revoke defendant's probation for third-degree es-

cape and public-intoxication charges upon the expiration of the probationary period. *Rowton v. State*, 2020 Ark. App. 174, 598 S.W.3d 522 (2020).

Procedure.

In a probation revocation case, the trial court did not err in denying defendant's motion to dismiss based on an allegedly invalid arrest warrant where her three-year probationary period began on March 28, 2018, the arrest warrant was issued on April 9, 2018, and was served on April 10, 2019, and thus the service of the arrest warrant was clearly within the three-year

probation period and in compliance with subsection (d) of this section. *Butry-Weston v. State*, 2021 Ark. App. 51 (2021).

Revocation Improper.

Circuit court erred by denying defendant's motion to dismiss the petition to revoke his probation as the evidence was insufficient to show that he committed a driving while intoxicated (DWI) offense and thus violated his probation because the record was devoid of any evidence of defendant's alleged DWI offense; the docket sheet was never admitted into evidence, and the probation officer had no knowledge of the facts giving rise to the conviction and merely testified that defendant had been convicted. *Boyd v. State*, 2019 Ark. App. 363, 583 S.W.3d 406 (2019).

Conditions of probation from 2012 did not apply to defendant in the revocation of probation proceeding because those conditions were superseded by the entry of the 2017 sentencing order, which had no conditions attached to it and did not expressly state that the 2012 conditions of probation applied to defendant. Because the 2012 conditions did not apply to defendant, the circuit court clearly erred when it revoked defendant's probation on its finding that he violated the 2012 condition to not commit a criminal offense. *Torres v. State*, 2020 Ark. App. 370, 607 S.W.3d 503 (2020).

Revocation Proper.

Defendant's probation was properly revoked because he failed to challenge the grounds for revocation based on his failure to report to his probation officer upon release from incarceration, failure to report changes of residence, and consumption of alcohol; although those unchallenged violations were enough to support the revocation, the circuit court's finding that defendant willfully violated the no-contact order involving his mother was not clearly against the preponderance of the evidence. *Clark v. State*, 2019 Ark. App. 362, 584 S.W.3d 680 (2019).

Revocation of probation upheld. *Lamb v. State*, 2019 Ark. App. 494, 588 S.W.3d 409 (2019).

Circuit court did not err by finding that defendant inexcusably violated the terms and conditions of her probation where the probation officer's unchallenged testi-

mony showed that she failed to report as directed, she was found at the home of a felon on multiple occasions and was living there, failed to provide a change of address after being told to move, and failed to pay supervision fees. *Turner v. State*, 2019 Ark. App. 534, 590 S.W.3d 158 (2019).

Revocation of defendant's probation was appropriate because the State proved by a preponderance of the evidence that defendant inexcusably failed to comply with a condition of probation that she not drink or possess intoxicating or alcoholic beverages. Defendant's probation officer testified that defendant denied having consumed any alcohol, but tested positive for alcohol; the probation officer further testified that on a subsequent probation visit, defendant confessed to consuming alcohol. *Rowton v. State*, 2020 Ark. App. 174, 598 S.W.3d 522 (2020).

Revocation of probation upheld. *Morgan v. State*, 2020 Ark. App. 212 (2020).

Circuit court did not err in failing to find defendant's noncompliance with the conditions of her suspended sentence excusable due to her drug addiction and need for rehabilitation; the State presented ample evidence of noncompliance, including defendant's methamphetamine possession and her failure to appear at hearings, report to jail after dismissal from a drug treatment program, and pay court-ordered monetary obligations. *Honeycutt v. State*, 2020 Ark. App. 449, 608 S.W.3d 631 (2020).

—Failure to Pay Restitution.

Circuit court's decision to revoke defendant's probation was not clearly against the preponderance of the evidence due to defendant's failure to pay monthly restitution as ordered; the State showed the nonpayment was willful based on evidence defendant's disability income exceeded her expenses, which included non-essential items, including cable television. *Young v. State*, 2019 Ark. App. 580, 591 S.W.3d 385 (2019).

—Failure to Report.

Revocation of probation upheld for failure to report. *Thompson v. State*, 2019 Ark. App. 421, 586 S.W.3d 682 (2019).

—New Offenses.

Revocation of defendant's probation was supported by evidence that she vio-

lated her probation conditions by committing theft, including a detective’s testimony that defendant admitted she had taken the jewelry from the victim and sold it to a pawnshop. *Tyler v. State*, 2021 Ark. App. 23 (2021).

Right to Confront Witnesses.

Even assuming any Confrontation Clause error in the probation officer testifying to information gained from former probation officers, the error would be harmless because there was sufficient other evidence to support revoking defendant’s suspended imposition of sentence for failing to remain on good behavior and committing new offenses. *Gilbreth v. State*, 2020 Ark. App. 86, 596 S.W.3d 29 (2020).

Sentence After Revocation.

After revoking defendant’s probation, the circuit court did not abuse its discretion by sentencing defendant to 10 years’ imprisonment for second-degree domestic battery, six years’ imprisonment for one count of aggravated assault on a family member, four years’ imprisonment followed by two years’ suspended imposition of sentence (SIS) for one count of aggravated assault on a family member, and six years’ SIS for first-degree terroristic threatening, and in ordering the sen-

tences to run consecutively, except the six years’ SIS for first-degree terroristic threatening, which was to run concurrent to the second-degree battery sentence, because the sentences imposed by the circuit court were within the statutory range prescribed by law. The circuit court had been repeatedly lenient with defendant and warned him of the potential consequences of violating the no-contact order concerning his mother. *Clark v. State*, 2019 Ark. App. 362, 584 S.W.3d 680 (2019).

Circuit court did not err in sentencing defendant after revoking his probation because the court considered evidence only from the revocation hearing and did not consider evidence from defendant’s prior hearing. *Neal v. State*, 2019 Ark. App. 489, 588 S.W.3d 759 (2019).

Imposing a five-year sentence rather than rehabilitation was not error where the court heard and considered defendant’s request for additional rehabilitation but rejected it, and in its oral ruling specifically noted that defendant had been discharged from two separate treatment programs during the pendency of the revocation proceedings and questioned whether any additional efforts at rehabilitation at the time would have been fruitful. *Honeycutt v. State*, 2020 Ark. App. 449, 608 S.W.3d 631 (2020).

16-93-309. Probation generally — Revocation hearing — Sentence alternatives — Sanctions.

CASE NOTES

Alternative Sanctions.

When revoking defendant’s probation that had been imposed when he pled guilty to residential burglary, the circuit court did not commit reversible error in imposing a sentence of 12 years, which was within the five to twenty-year range

for Class B felonies; under this section, the court was permitted to impose alternative sanctions but was not required to impose or consider alternative sanctions. *Reno v. State*, 2020 Ark. App. 403, 607 S.W.3d 184 (2020).

SUBCHAPTER 7 — PAROLE

16-93-701. Authority to grant and parameters.

CASE NOTES

Appeal Not Moot.

Even assuming that defendant was re-

leased on parole, his appeal concerning jail-time credit was not moot because the

resolution of the issue on appeal would have necessarily affected the duration of his parole as well as his prison-time expo-

sure in the event his parole was revoked. *Polston v. State*, 2020 Ark. App. 530 (2020).

SUBCHAPTER 12 — COMMUNITY CORRECTION

16-93-1207. Order of court.

CASE NOTES

Probation Revocation.

Circuit court erred in expunging defendant's felony conviction under the Community Punishment Act, § 16-93-1201 et seq., because the court only referenced the original three-year probation order and not the post-revocation order imposing

four years of probation, defendant failed to successfully complete probation under the original, revoked order, and the Act was explicitly made inapplicable to defendant's post-revocation sentence by the sentencing court. *State v. Brown*, 2019 Ark. 395, 590 S.W.3d 121 (2019).

16-93-1210. Sentence optional.

CASE NOTES

Cited: *State v. Brown*, 2019 Ark. 395, 590 S.W.3d 121 (2019).

CHAPTER 95

INTERSTATE AGREEMENT ON DETAINERS

16-95-101. Agreement on Detainers.

CASE NOTES

Untried Indictment.

Circuit court erred in granting defendant's motion to dismiss all pending criminal actions because the detainer lodged by the sheriff's department was not based on an untried information, and thus defendant could not have availed himself of the 180-day speedy trial provision in the In-

terstate Agreement on Detainers (IAD), or the IAD's relevant dismissal provisions. It would be amending the statute to permit an arrest warrant to trigger the speedy trial provision in Article III of the IAD. *State v. Higginbotham*, 2020 Ark. 415, 612 S.W.3d 164 (2020).

CHAPTER 97

SENTENCING

16-97-103. Evidence.

CASE NOTES

ANALYSIS

Admissibility.
Character Evidence.
Criminal History.
Prejudicial Error.
Prejudicial Error Not Shown.
Victim Impact Evidence.

Admissibility.

In defendant's sentencing trial following his guilty plea to first-degree murder, the circuit court properly admitted defendant's letter requesting the proceeds of his wife's life insurance policy because it was relevant to his guilt and to rebut his argument that he had accepted responsibility for his actions or had exhibited remorse where it suggested a possible financial motive for his wife's murder; while the jury might have negatively viewed his desire to receive his wife's life insurance proceeds, the impact did not substantially outweigh its probative value since it provided evidence of his motive for the murder and displayed his conduct after the murder, and the jury could weigh both in considering his request for a lighter sentence. *Burnell v. State*, 2020 Ark. 244, 602 S.W.3d 115 (2020).

In the jury sentencing trial after defendant pled guilty to aggravated robbery, the trial court did not err in allowing the State to call a detective and defendant's sister-in-law to testify about two crimes with which defendant had been charged but not convicted because that evidence showed that the robbery for which defendant was convicted was not an isolated incident and that defendant engaged in a pattern of criminal behavior relevant to the jury's determination of an appropriate sentence. Under this section, certain evidence is admissible at the sentencing phase that would not have been admissible at the guilt-innocence phase; and even if the introduction of the evidence was in error, there was no prejudice because defendant received a sentence

within the statutory range short of the maximum. *Thomas v. State*, 2020 Ark. App. 357, 605 S.W.3d 261 (2020).

Character Evidence.

Trial court misapplied the law by overruling defendant's objection at sentencing to admission of evidence concerning nude images found on his computer without first engaging in the required Ark. R. Evid. 403 inquiry; from the trial court's comments from the bench in response to defendant's objection, it was apparent that the trial court was under the erroneous impression that Rule 403 did not apply at the sentencing stage of the proceedings. *Peebles v. State*, 2019 Ark. App. 483, 588 S.W.3d 355 (2019).

Criminal History.

Circuit court did not abuse its discretion in admitting the Department of Correction pen pack and an uncertified copy of a court of appeals opinion for sentencing-enhancement purposes; although the pen pack incorrectly reflected a guilty plea to two prior felonies, it included defendant's prior convictions, offense dates, sentencing dates, felony classifications, and sentences for each conviction, and the appellate opinion showed that the conviction and sentence were affirmed. Although neither of the documents strictly complied with § 5-4-504(b), the documents did satisfy the circuit court beyond a reasonable doubt under § 5-4-504(a) that defendant had been found guilty of the prior felonies. *Rayburn v. State*, 2019 Ark. 254, 583 S.W.3d 385 (2019).

Prejudicial Error.

Circuit court erred in resentencing defendant to life in prison after his original life-without-parole sentence for juvenile crimes was vacated due to *Miller v. Alabama*, 567 U.S. 460 (2012), because evidence of defendant's original sentence had no probative value and was inherently prejudicial. The jury not only could have had a diminished sense of responsibility,

but also might have improperly considered the procedural history of the case in determining the appropriate punishment, particularly given the testimony of the victim's family as to the adverse effect that the overturning of defendant's sentence and the resentencing trial had on them. *Kitchell v. State*, 2020 Ark. 102, 594 S.W.3d 848 (2020).

Prejudicial Error Not Shown.

Even if the circuit court erred in the sentencing hearing in failing to exclude the screenshots of the text messages between the undercover officer and the defendant, no prejudice was shown and any error was harmless; defendant had already pleaded guilty to the crimes and a defendant who has received a sentence within the statutory range short of the

maximum sentence cannot show prejudice from the sentence itself. *Montgomery v. State*, 2019 Ark. App. 376, 586 S.W.3d 187 (2019).

Victim Impact Evidence.

In the sentencing phase, allowing the testimony of the child's mother that her father's abuse of her daughter had caused tremendous suffering to her family was not error where defendant had not raised a specific objection to the statement at trial, and the testimony was relevant to show the impact the offense had on her family and was relevant to sentencing. *Cagle v. State*, 2020 Ark. 340, 609 S.W.3d 630 (2020).

Cited: *Peer v. State*, 2020 Ark. App. 181, 598 S.W.3d 59 (2020).

CHAPTER 100

MENTAL HEALTH AND THE CRIMINAL JUSTICE SYSTEM

SUBCHAPTER 2 — MENTAL HEALTH SPECIALTY COURTS

16-100-202. Goals of mental health specialty court program.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Amie Alexander & Sarah Giammo, Survey of Legislation 2017: Arkansas General Assembly, 40 U. Ark. Little Rock L. Rev. 305 (2017).

SUBTITLE 7. PARTICULAR PROCEEDINGS AND REMEDIES

CHAPTER 108

ARBITRATION AND AWARD

SUBCHAPTER 2 — UNIFORM ARBITRATION ACT

16-108-228. Appeals.

CASE NOTES

Cited: *BHC Pinnacle Pointe Hosp., LLC v. Nelson*, 2020 Ark. 70, 594 S.W.3d 62 (2020).

CHAPTER 111
UNIFORM DECLARATORY JUDGMENTS ACT

16-111-102. Power to construe, etc.

CASE NOTES

ANALYSIS

Applicability.
Justiciable Controversy.
Sovereign Immunity.

Applicability.

Vast majority of postconviction petitioner’s claims were not appropriate for a declaratory judgment action as they related to alleged trial errors, and each of the claims presented an argument that could have been raised on direct appeal. *Jones v. Payne*, 2020 Ark. App. 450 (2020).

Justiciable Controversy.

Circuit court did not err in denying resident’s petition for declaratory judgment because no justiciable controversy existed; the allocation of the cost of the improvements to the water system was sufficiently detailed in the 2005 receiver-

ship order, the order had been entered and affirmed, and the city had no control over the receivership or the handling or financing of the projects undertaken pursuant to its authority. *Williams v. City of Sherwood*, 2019 Ark. App. 487, 586 S.W.3d 711 (2019).

Sovereign Immunity.

Marijuana cultivation facility applicant was allowed to proceed on an equal protection claim against the Medical Marijuana Commission and the claim was not barred by sovereign immunity as it was premised on the State’s allegedly unconstitutional actions and sought a declaratory judgment, and the applicant had sufficiently alleged state action that differentiated among individuals. *Ark. Dep’t of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC*, 2020 Ark. 213, 601 S.W.3d 111 (2020).

16-111-111. Parties.

CASE NOTES

Cited: *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020); *Ring v. Ark. Dep’t of Human Servs.*, 2020 Ark. App. 150, 596 S.W.3d 76 (2020).

CHAPTER 112
HABEAS CORPUS

SUBCHAPTER 1 — GENERAL PROVISIONS

16-112-101. Procedure.

CASE NOTES

Writ Denied.

Inmate was not entitled to habeas relief because (1) the inmate’s claim that he was charged under an incorrect name did not

implicate the facial validity of the trial court’s judgment or jurisdiction, and (2) the inmate’s actual-innocence claim effectively contesting sufficiency of the evi-

dence was not cognizable on habeas corpus. *Collier v. Kelley*, 2020 Ark. 77, 594 S.W.3d 50 (2020).

16-112-103. Petition.

CASE NOTES

Denial of Petition.

Habeas petitioner's argument that the sentence was grossly disproportionate was not cognizable as it would have required an evaluation of the circumstances of his case. *Proctor v. Payne*, 2020 Ark. 142, 598 S.W.3d 17 (2020).

Although a circuit court clearly erred in determining that petitioner's Fair Sentencing of Minors Act (FSMA) arguments

were previously considered in a prior habeas petition, his argument regarding the FSMA's parole-eligibility provisions were not cognizable in a habeas proceeding. Parole eligibility falls clearly within the domain of the executive branch and specifically the Department of Corrections, as fixed by statute. *Proctor v. Payne*, 2020 Ark. 142, 598 S.W.3d 17 (2020).

SUBCHAPTER 2 — NEW SCIENTIFIC EVIDENCE

16-112-201. Writ of Habeas Corpus — New scientific evidence.

CASE NOTES

Relief Denied.

Trial court did not clearly err in holding that death row defendant, convicted of a 1993 murder, failed to meet the predicate requirements for DNA testing of 26 pieces of evidence because the proposed testing could not have raised a reasonable probability that defendant did not commit the

offense given the significant evidence tying him to the murder; the presence of another male's DNA from testing of items such as the Caucasian hairs could not significantly advance defendant's claim of innocence. *Johnson v. State*, 2019 Ark. 391, 591 S.W.3d 265 (2019).

16-112-202. Form of motion.

CASE NOTES

Postconviction DNA Testing.

Trial court did not clearly err in holding that death row defendant, convicted of a 1993 murder, failed to meet the predicate requirements for DNA testing of 26 pieces of evidence because the proposed testing could not have raised a reasonable probability that defendant did not commit the

offense given the significant evidence tying him to the murder; the presence of another male's DNA from testing of items such as the Caucasian hairs could not significantly advance defendant's claim of innocence. *Johnson v. State*, 2019 Ark. 391, 591 S.W.3d 265 (2019).

CHAPTER 114

MALPRACTICE ACTIONS

SUBCHAPTER 2 — ACTIONS FOR MEDICAL INJURY

16-114-206. Burden of proof.

CASE NOTES

Expert Testimony.

Circuit court properly granted summary judgment to a hospital in an action filed by a personal representative (PR) for medical malpractice in the death of her mother because the PR failed to offer expert testimony to support the proximate cause element; the interaction between the mother's numerous conditions, her malnutrition, and the necessity of supple-

mental nutrition methods of feeding either by mouth or through other means would not be within the common knowledge of a jury and did not justify a departure from the general rule that a plaintiff must prove a medical malpractice claim through expert testimony. *Valentine v. White Cty. Med. Ctr.*, 2020 Ark. App. 565 (2020).

16-114-212. Tolling of the statute of limitations.

CASE NOTES

Notice.

Patient's claim that the circuit court erred in dismissing his complaint because he complied with the notice provisions contained in the tolling statute of the Arkansas Medical Malpractice Act failed

because the complaint was filed outside the Act's two-year statute of limitations and he failed to comply with the notice portion of the tolling statute. *Williams v. St. Vincent Infirmary Med. Ctr.*, 2021 Ark. 14 (2021).

CHAPTER 116

PRODUCTS LIABILITY

SUBCHAPTER 1 — GENERAL PROVISIONS

16-116-101. Liability of supplier.

CASE NOTES

Causation.

In a products liability suit, summary judgment was properly granted to the auto dealer on the strict liability claim where the evidence and arguments focused causation on the later-added wheels and tires, not the inherent design of the

vehicle as alleged in the complaint, and thus the evidence failed to show that the dealer knew that the original design of the vehicle was unreasonably dangerous. *Bank of the Ozarks, Inc. v. Ford Motor Co.*, 2020 Ark. App. 231, 599 S.W.3d 718 (2020).

CHAPTER 123

CIVIL RIGHTS

SUBCHAPTER 1 — ARKANSAS CIVIL RIGHTS ACT OF 1993

16-123-101. Title.

CASE NOTES

ANALYSIS

Due Process.
 Respondeat Superior.

Due Process.

Circuit court properly denied the city a directed verdict in a class action alleging that the assessment of installment fees in Little Rock District Court, Second Division violated due process in charging installment fees even if the fine was paid off early. The lack of notice, as established by the evidence at trial, precluded satisfaction of due process; there was no evidence showing that plaintiff mother was advised of a refund or reconsideration of the fee, but instead, she was simply told by the court cashier that she had to pay the

entire sum. *City of Little Rock v. Nelson*, 2020 Ark. 34, 592 S.W.3d 633 (2020).

Respondeat Superior.

Circuit court properly denied the city a directed verdict in a class action alleging that the assessment of installment fees in Little Rock District Court, Second Division violated due process because the installment fee policy constituted a governmental policy or custom to which municipal liability could attach; the district court judge consulted with deputy city attorneys and others in implementing the policy and the policy was automatically applied to all district court defendants on an installment plan. *City of Little Rock v. Nelson*, 2020 Ark. 34, 592 S.W.3d 633 (2020).

16-123-102. Definitions.

CASE NOTES

Compensatory Damages.

Circuit court erroneously considered events and circumstances unrelated to the city's December 2015 due-process violations in determining the tenants' awards of damages under the Arkansas Civil Rights Act because much of the evidence recounted by the circuit court about mental anguish and emotional distress as a result of the city's actions lacked a causal connection to the violations. The February

2016 gas leak was not causally connected to the December 2015 due-process violation; one of the tenants moved from her apartment in November 2016 based on water-leak damage and a sewer back-up and not the due process violations; and there was no evidence that another tenant's worsened medical conditions were caused by the closure. *City of Little Rock v. Alexander Apts., LLC*, 2020 Ark. 12, 592 S.W.3d 224 (2020).

16-123-105. Civil rights offenses.

CASE NOTES

ANALYSIS

Attorney's Fees.
Excessive Force.

Attorney's Fees.

After a jury found that the city had violated the Arkansas Civil Rights Act, § 16-123-101 et seq., in charging excessive installment fees in traffic court, the circuit court did not abuse its discretion in its award of attorney's fees to plaintiff under this section; the circuit court's intimate acquaintance with the record and quality of counsel's services gave it a superior opportunity to assess the critical factors. *City of Little Rock v. Nelson*, 2020 Ark. 19, 592 S.W.3d 666 (2020).

Excessive Force.

In an excessive-force case, considering the entire "course of proceedings", the trial court did not err in interpreting the claims against the officers and the police

chief under the Arkansas Civil Rights Act, § 16-123-101 et seq., as individual-capacity claims. *Faughn v. Kennedy*, 2019 Ark. App. 570, 590 S.W.3d 188 (2019).

In an excessive-force case, material questions of fact remained regarding whether the force the officers used against the father and son and the force used by the police chief against the father was reasonable; therefore, those defendants were not entitled to summary judgment on the basis of qualified immunity. *Faughn v. Kennedy*, 2019 Ark. App. 570, 590 S.W.3d 188 (2019).

Trial court erred in denying summary judgment to the police chief on the son's claims under the Arkansas Civil Rights Act, § 16-123-101 et seq.; while the son made excessive-force allegations against some officers, he did not allege that the police chief used any force against him. *Faughn v. Kennedy*, 2019 Ark. App. 570, 590 S.W.3d 188 (2019).

16-123-107. Discrimination offenses.

CASE NOTES

ANALYSIS

Claim Dismissed.
Gender Discrimination.

Claim Dismissed.

Employer was properly granted summary judgment on employee's age and sex discrimination claims brought under the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964, and the Arkansas Civil Rights Act of 1993 because the employee, a radiology manager, failed to present evidence demonstrating a genuine issue of material fact as to whether the employer's proffered reason for the employee's termination, i.e., the employee's rudeness and insubordination which culminated in a meeting, was a mere pretext for intentional dis-

crimination. *Main v. Ozark Health, Inc.*, 959 F.3d 319 (8th Cir. 2020).

Gender Discrimination.

In a gender discrimination action, none of a former employee's purported direct evidence established the required "specific link" between his termination and gender-based animus. The absence of conclusive evidence that the employee violated internet and conduct policies was insufficient to prove improper termination because the central question in determining if termination was proper was not whether the employee actually engaged in prohibited conduct, but whether the employer believed so in good faith. *Rinchuso v. Brookshire Grocery Co.*, 944 F.3d 725 (8th Cir. 2019).

16-123-108. Retaliation — Interference — Remedies.**CASE NOTES****ANALYSIS**

Proper Defendants.
Summary Judgment.

Proper Defendants.

Law professor's Arkansas Civil Rights Act (ACRA) claims against state university officials were properly dismissed because the ACRA only permitted retaliation and interference claims against employers, not individuals. *Steinbuch v.*

Univ. of Ark., 2019 Ark. 356, 589 S.W.3d 350 (2019).

Summary Judgment.

Circuit court's error in denying a terminated surgeon's motions to compel production was harmless because the evidence would not have rebutted the medical providers' argument that the surgeon's retaliation claim failed as a matter of law. *Williams v. Baptist Health*, 2020 Ark. 150, 598 S.W.3d 487 (2020).

SUBCHAPTER 2 — ARKANSAS FAIR HOUSING ACT**16-123-201. Title.****RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Tasha L. Strickland, Note: Establishing Precedent for AFHA Enforcement and Revising Ar-

kansas's Law on Punitive Damages (*Watkins v. Turner*, 2016 Ark. App. 158), 40 U. Ark. Little Rock L. Rev. 461 (2018).

16-123-203. Legislative declaration.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Tasha L. Strickland, Note: Establishing Precedent for AFHA Enforcement and Revising Ar-

kansas's Law on Punitive Damages (*Watkins v. Turner*, 2016 Ark. App. 158), 40 U. Ark. Little Rock L. Rev. 461 (2018).

16-123-210. Civil remedy — Definition.**RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Tasha L. Strickland, Note: Establishing Precedent for AFHA Enforcement and Revising Ar-

kansas's Law on Punitive Damages (*Watkins v. Turner*, 2016 Ark. App. 158), 40 U. Ark. Little Rock L. Rev. 461 (2018).

SUBCHAPTER 3 — ARKANSAS FAIR HOUSING COMMISSION**16-123-301. Finding.****RESEARCH REFERENCES**

U. Ark. Little Rock L. Rev. Tasha L. Strickland, Note: Establishing Precedent for AFHA Enforcement and Revising Ar-

kansas's Law on Punitive Damages (*Watkins v. Turner*, 2016 Ark. App. 158), 40 U. Ark. Little Rock L. Rev. 461 (2018).

16-123-336. Civil action.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Tasha L. Strickland, Note: Establishing Precedent for AFHA Enforcement and Revising Ar-

kansas’s Law on Punitive Damages (*Watkins v. Turner*, 2016 Ark. App. 158), 40 U. Ark. Little Rock L. Rev. 461 (2018).

16-123-338. Relief.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Tasha L. Strickland, Note: Establishing Precedent for AFHA Enforcement and Revising Ar-

kansas’s Law on Punitive Damages (*Watkins v. Turner*, 2016 Ark. App. 158), 40 U. Ark. Little Rock L. Rev. 461 (2018).

TITLE 17

PROFESSIONS, OCCUPATIONS, AND BUSINESSES

SUBTITLE 2. NONMEDICAL PROFESSIONS

CHAPTER.
40. PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES.

SUBTITLE 3. MEDICAL PROFESSIONS

CHAPTER.
101. VETERINARIANS AND VETERINARY TECHNICIANS.

SUBTITLE 1. PROFESSIONS GENERALLY

CHAPTER 1

GENERAL PROVISIONS

17-1-102. Liability of committee members of professional societies, review organizations, and hospital medical staffs — Definition.

CASE NOTES

Discovery.
Circuit court abused its discretion in denying a terminated surgeon’s motions to compel production from the hospital of the peer review records of similarly situated physicians on the medical staff and the identities of physicians who complained about his treatment of patients;

the disputed discovery fit within the plain language of § 16-46-105(b)(2) because the discovery sought was in a legal action brought by a medical practitioner subjected to disciplinary action by a hospital medical-staff or medical-review committee. *Williams v. Baptist Health*, 2020 Ark. 150, 598 S.W.3d 487 (2020).

17-1-103. Registration, certification, and licensing for criminal offenders.**CASE NOTES****Construction.**

Circuit court properly granted summary judgment to the Arkansas State Police (ASP) in an action by a towing company and an employee for injunctive and declaratory relief asserting that the ASP policy prohibiting individuals with felony convictions from placement on the ASP Towing Rotation List was illegal under this section. Plaintiffs' suit was barred by sovereign immunity, because this sec-

tion did not apply to ASP, as ASP did not deal in licensing or regulating the occupation of towing within the meaning of subsection (f) of this section, as required for this section to apply; thus, plaintiffs failed to demonstrate that the illegal-act exception to sovereign immunity applied. *Steve's Auto Ctr. of Conway, Inc. v. Ark. State Police*, 2020 Ark. 58, 592 S.W.3d 695 (2020).

SUBTITLE 2. NONMEDICAL PROFESSIONS**CHAPTER 25****CONTRACTORS****SUBCHAPTER 1 — GENERAL PROVISIONS****17-25-103. Penalties — Enforcement.****CASE NOTES****Applicability.**

Circuit court erred in not allowing a contractor an offset against a judgment for the balance due under a construction contract because subsection (d) of this section could not be interpreted to mean

that the contractor was unable to defend the action for negligent construction and breach of contract that was brought against the contractor by a homeowner. *Southern Constr., LLC v. Horton*, 2020 Ark. App. 361, 609 S.W.3d 16 (2020).

CHAPTER 27**COUNSELORS****SUBCHAPTER 3 — LICENSING****17-27-311. Privileged communication.****CASE NOTES**

Cited: *Vaughn v. State*, 2020 Ark. 313, 608 S.W.3d 569 (2020).

CHAPTER 40

PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

SUBCHAPTER.

3. LICENSE, CREDENTIAL, AND COMMISSION.

SUBCHAPTER 3 — LICENSE, CREDENTIAL, AND COMMISSION

SECTION.

17-40-356. Advertising.

Effective Dates. Acts 2021, No. 61, § 2: Feb. 4, 2021. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that home security and alarm companies often use advertising and marketing materials to promote their services; that in some cases, the home security and alarm companies that are advertising or sending marketing materials to the citizens of Arkansas are not licensed in this state or do not list the company name on the advertising or marketing materials; that the lack of licensing information and the company name from advertising and marketing materials can result in confusion to the consumers of Arkansas and

may constitute deceptive advertising and marketing; and that this act is immediately necessary to protect the consumers of Arkansas from deceptive advertising and marketing materials. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

17-40-356. Advertising.

Any time that a licensee is engaged in an activity regulated under this chapter, the licensee shall display the company name and license number or a statement referring to a website or toll-free number to obtain licensing information on all advertising and marketing materials, including without limitation letterhead, printed advertisements, electronic media advertisements, decals, and yard signs.

History. Acts 2021, No. 61, § 1.

SUBTITLE 3. MEDICAL PROFESSIONS

CHAPTER 92

PHARMACISTS AND PHARMACIES

SUBCHAPTER 5 — GENERIC DRUGS AND PRICE LISTS

17-92-507. Maximum Allowable Cost Lists — Definitions.

CASE NOTES

Federal Preemption.

Acts 2015, No. 900, which amended this section and requires pharmacy benefit managers to reimburse Arkansas pharmacies at a price equal to or higher than that which the pharmacy paid to buy a prescription drug from a wholesaler, has neither an impermissible connection with nor reference to the Employee Retirement

Income Security Act of 1974 (ERISA) and is therefore not preempted. Act 900 is merely a form of cost regulation, and its enforcement mechanisms do not require plan administrators to structure their benefit plans in any particular manner. *Rutledge v. Pharm. Care Mgmt. Ass'n*, — U.S. —, 141 S. Ct. 474, 208 L. Ed. 2d 327 (2020).

CHAPTER 95

PHYSICIANS AND SURGEONS

SUBCHAPTER 4 — ARKANSAS MEDICAL PRACTICES ACT — LICENSING

17-95-401. License required.

CASE NOTES

Public Policy.

Circuit court properly granted a staffing agency summary judgment on its counterclaim against a doctor for breach of contract for failing to return the \$30,000 signing bonus when he was terminated

because the doctor failed to demonstrate that the staffing agency breached the agreement first by terminating him in retaliation for his objections to a hospital's use of nurse-initiated order sets; even assuming the doctor could bring such a

claim as an independent contractor, and he could not, the doctor did not establish that the hospital's use of nurse-initiated order sets violated the public policy against the unlicensed practice of medicine and he could not extrapolate such a policy from this section. Moreover, the

evidence demonstrated that the doctor's unacceptable conduct was the reason for his termination, and not his objections to nurse-initiated order sets. *Johnson v. Pope Emergency Grp., LLC*, 2019 Ark. App. 544, 589 S.W.3d 462 (2019).

CHAPTER 97

PSYCHOLOGISTS AND PSYCHOLOGICAL EXAMINERS

SUBCHAPTER 1 — GENERAL PROVISIONS

17-97-105. Privileged communications.

CASE NOTES

Cited: *Vaughn v. State*, 2020 Ark. 313, 608 S.W.3d 569 (2020).

CHAPTER 101

VETERINARIANS AND VETERINARY TECHNICIANS

SUBCHAPTER.

2. VETERINARY MEDICAL EXAMINING BOARD.

SUBCHAPTER 2 — VETERINARY MEDICAL EXAMINING BOARD

SECTION.

17-101-202. [Repealed.]

17-101-202. [Repealed.]

Publisher's Notes. This Publisher's Note is being set out below to correct an error.

This section, concerning secretary-treasurer, was repealed by Acts 2019, No. 910,

§ 112, effective July 1, 2019. The section was derived from Acts 1975, No. 650, § 3; A.S.A. 1947, § 72-1134; Acts 1993, No. 1198, § 1.

TITLE 18**PROPERTY*****SUBTITLE 2. REAL PROPERTY*****CHAPTER 11****REAL PROPERTY INTERESTS GENERALLY****SUBCHAPTER 1 — OWNERSHIP AND POSSESSION****18-11-106. Adverse possession.****CASE NOTES****ANALYSIS**

Adverse Possession Shown.
Prescriptive Easement Shown.

Adverse Possession Shown.

Adverse possession was found because the purported owner of real property had notice of the possessor's intent to adversely possess the property as the owner knew that the possessor lived on the property for over 10 years, and the possessor maintained and improved the property and paid taxes and insurance on the property. Moreover, the familial presumption of permission was inapplicable as the parties were more akin to strangers than family; and any title search would have suggested that the possessor had title, or was claiming an interest in the property. *O'Neal v. Love*, 2020 Ark. App. 40, 593 S.W.3d 39 (2020).

Prescriptive Easement Shown.

A prescriptive easement may be created over a ditch or waterway and the circuit

court did not err by finding that the adjoining landowner proved the elements of a prescriptive easement as to the road and the ditch, despite the ditch being used only when the road flooded; even a member of the appellant hunting club admitted that the adjoining landowner had continuously used the road and "regularly" used the ditch, the adjoining landowner took steps to maintain the property, and there was no evidence of attempted obstruction of the use between 2005 and 2014, a period in excess of the seven-year prescriptive period required. *Five Forks Hunting Club, LLC v. Nixon Family P'ship*, 2019 Ark. App. 371, 584 S.W.3d 685 (2019).

Circuit court did not clearly err in finding that neither the route of the prescriptive easement nor the manner of its use should be altered from the use established during the prescriptive period. *Five Forks Hunting Club, LLC v. Nixon Family P'ship*, 2019 Ark. App. 371, 584 S.W.3d 685 (2019).

CHAPTER 12

CONVEYANCES

SUBCHAPTER 1 — GENERAL PROVISIONS

18-12-103. Restrictive covenants — Definition.

CASE NOTES

Appellate Review.

Remand was necessary because the appellate court was unable to determine the evidence on which the circuit court, in enforcing an equitable servitude, found that the grantor to plaintiff's predecessor in title suffered a diminution in the value

of its property as a result of the restrictive language in the deed of conveyance; the deed restricted the property from being used as a grocery store/supermarket or discount department store or wholesale club. *Bernard Court, LLC v. Walmart, Inc.*, 2020 Ark. App. 563 (2020).

SUBCHAPTER 4 — HUSBAND AND WIFE

18-12-403. Conveyance, etc., of homestead.

CASE NOTES

Estoppel.

Circuit court properly found that the protections of this section were not available to ex-wife because she was aware of the lien on the property; she knew there was a loan that obligated her to pay a debt, she behaved as though she understood that she was so obligated, and even after she claimed she learned about the alleged forgeries of her name to the documents, she agreed to take responsibility for any debt on the property in exchange

for sole ownership of it in the divorce. *Kline v. PHH Mortg. Corp.*, 2019 Ark. App. 462, 587 S.W.3d 262 (2019).

There was no evidence to support a finding that ex-wife acknowledged the mortgage within the meaning of this section but she did not demonstrate reversible error because the circuit court did not make a finding of compliance with this section but instead found estoppel. *Kline v. PHH Mortg. Corp.*, 2019 Ark. App. 462, 587 S.W.3d 262 (2019).

CHAPTER 15

EMINENT DOMAIN

SUBCHAPTER 1 — GENERAL PROVISIONS

18-15-102. Actions against corporations appropriating private property.

CASE NOTES

Jurisdiction.

Circuit court erred in dismissing the property owners' complaint against an electric company and in finding that the Arkansas Public Service Commission had

primary jurisdiction of the case; there was no dispute that the company had a right to use its own existing lines to transmit broadband services, but the owners' issue was with the company's entry onto their

land to install completely new lines for broadband services without just compensation or an assessment of damages for the increased interference. The circuit court had exclusive, original jurisdiction

to adjudicate a dispute involving private-property rights and damages for inverse condemnation and increased interference. *Stanley v. Ozarks Elec. Coop. Corp.*, 2019 Ark. App. 560, 591 S.W.3d 322 (2019).

SUBCHAPTER 3 — MUNICIPAL CORPORATIONS GENERALLY

18-15-307. Compensation for and possession of property.

CASE NOTES

ANALYSIS

Costs.

Expert Witness Fees.

Costs.

In an eminent domain proceeding brought by a municipal water and sewage commission for two utility easements, the trial court erred in not awarding the landowner the cost of the appraisal fee under this section, as that was a cost specifically and necessarily incurred for assessment purposes, and thus was “occasioned by the assessment”. *Blanchard v. City of Spring-*

dale, 2019 Ark. App. 522, 588 S.W.3d 807 (2019).

Expert Witness Fees.

In an eminent domain proceeding brought by a municipal water and sewage commission for two utility easements, the trial court did not err in denying the landowner’s expert witness fee given case law specifically holding that such fees were not “costs occasioned by the assessment”. *Blanchard v. City of Springdale*, 2019 Ark. App. 522, 588 S.W.3d 807 (2019).

SUBCHAPTER 5 — ELECTRIC COMPANIES GENERALLY

18-15-507. Damages.

CASE NOTES

Jurisdiction.

Circuit court erred in dismissing the property owners’ complaint against an electric company and in finding that the Arkansas Public Service Commission had primary jurisdiction of the case; there was no dispute that the company had a right to use its own existing lines to transmit broadband services, but the owners’ issue was with the company’s entry onto their

land to install completely new lines for broadband services without just compensation or an assessment of damages for the increased interference. The circuit court had exclusive, original jurisdiction to adjudicate a dispute involving private-property rights and damages for inverse condemnation and increased interference. *Stanley v. Ozarks Elec. Coop. Corp.*, 2019 Ark. App. 560, 591 S.W.3d 322 (2019).

SUBCHAPTER 6 — MUNICIPAL CORPORATIONS — WATER AND WATER-GENERATED ELECTRIC COMPANIES

18-15-605. Damages — Deposits.

CASE NOTES

Attorney's Fees.

In an eminent domain proceeding brought by a municipal water and sewage commission for two utility easements, the trial court properly denied the landowner's motion for attorney's fees under subsection (b) of this section because the taking was limited to sewer lines and thus this section was inapplicable. The lan-

guage of the easement, "water transmission line(s) and/or sewer collection lines", was ambiguous, and extrinsic evidence demonstrated that the commission was exercising its eminent domain powers exclusively for the construction of sewer lines, and not water lines. *Blanchard v. City of Springdale*, 2019 Ark. App. 522, 588 S.W.3d 807 (2019).

CHAPTER 16

LANDLORD AND TENANT

SUBCHAPTER 1 — GENERAL PROVISIONS

18-16-110. Landlord's liability arising from alleged defects or disrepair of premises.

CASE NOTES

Evidence Sufficient.

Substantial evidence supported the jury's verdict in favor of a customer in her action to recover damages when she slipped and fell on a sidewalk in front of a store when it was raining; substantial evidence supported a finding that the landlord failed to maintain the premises

in good condition as required by the lease given the expert testimony about the smooth concrete's dangerousness and evidence that others had slipped there and the landlord had been notified. *Dollar Gen. Corp. v. Elder*, 2020 Ark. 208, 600 S.W.3d 597 (2020).

SUBTITLE 3. PERSONAL PROPERTY

CHAPTER 27

RIGHTS IN PERSONAL PROPERTY

SUBCHAPTER 1 — GENERAL PROVISIONS

18-27-103. Abandonment of personal property.

CASE NOTES

Applicability.

In a replevin action to recover personal property that remained on real property

that was sold at a 2013 foreclosure sale, this section enacted in 2015 did not apply retroactively to support defendants' argu-

ment that the front end loader could be deemed abandoned as a matter of law; this section is not similar to a statute of limitations as it addresses property

rights, and thus is a matter affecting substantive rights. *Hermitage Newark, LLC v. Ark. Sand Co.*, 2020 Ark. App. 214, 599 S.W.3d 654 (2020).

SUBTITLE 4. MORTGAGES AND LIENS

CHAPTER 41

LANDLORDS' LIENS

18-41-101. Lien on crop — Period effective — Definition.

CASE NOTES

ANALYSIS

Priority.
Sublessor.

Priority.

Landlord's statutory lien on crops for the rent due is not subject to Article 9 of the Uniform Commercial Code; instead, the statutory lien has priority regardless of when a conflicting interest was perfected. *Agrifund, LLC v. Regions Bank*, 2020 Ark. 246, 602 S.W.3d 726 (2020).

Sublessor.

Circuit court did not clearly err in concluding that a sublessor was entitled to a landlord's lien against crop proceeds as it never considered, much less decided, whether the original lease was valid since the lessor and the sublessor reached a settlement before trial; the circuit court therefore had no need to address the claims. *Agrifund, LLC v. Regions Bank*, 2020 Ark. 246, 602 S.W.3d 726 (2020).

18-41-102. Liability of subtenants.

CASE NOTES

Lien.

This section does not foreclose a sublessor from holding a landlord lien. The original landlord and the sublessor may both hold landlord liens against the subtenant. *Agrifund, LLC v. Regions Bank*, 2020 Ark. 246, 602 S.W.3d 726 (2020).

Circuit court did not clearly err in concluding that a sublessor was entitled to a

landlord's lien against crop proceeds as it never considered, much less decided, whether the original lease was valid since the lessor and the sublessor reached a settlement before trial; the circuit court therefore had no need to address the claims. *Agrifund, LLC v. Regions Bank*, 2020 Ark. 246, 602 S.W.3d 726 (2020).

CHAPTER 49

ENFORCEMENT OF MORTGAGES, DEEDS OF TRUST, AND VENDORS' LIENS

18-49-101. Limitation of actions.

CASE NOTES

Acceleration Clauses.

Appellants were not entitled to enforce the promissory note and mortgage as they accelerated the note on March 17, 2011, and filed a foreclosure complaint more than five years later on July 26, 2016; and they admitted that the applicable statute of limitations was five years, and that it was a sufficient defense that they had not

brought the suit within the period of limitation prescribed by a law. Further, appellants' argument that the prior acceleration, performed on March 17, 2011, was abandoned failed as there was no clear intent to abandon the acceleration. *Ocwen Loan Servicing, LLC v. Oden*, 2020 Ark. App. 384, 609 S.W.3d 410 (2020).

CHAPTER 50

STATUTORY FORECLOSURES

18-50-104. Prerequisites for foreclosure sale — Contents of notice of sale — Persons to receive notice.

CASE NOTES

Sufficiency of Notice.

Foreclosure of the debtor's property was not conducted in accordance with Arkansas law because the creditor's notice of default and intent to sell did not cite the specific default that had occurred under the debtor's mortgage documents as required by this section, and as a result, the sale was subject to being set aside; thus, on the date the debtor filed his bankruptcy petition, he retained a legal or equitable interest in the property, making the property part of his bankruptcy estate. Because the sale was not conducted in accordance with Arkansas law, the debtor could cure the default through his Chapter 13 plan. *In re Davis*, No. 2:18-bk-73125, 2020 Bankr. LEXIS 2218 (Bankr. W.D. Ark. May 28, 2020).

In responding to a certified question from a federal bankruptcy court, subdivisions (a)(1) and (b)(4) of this section were interpreted to require specificity beyond mere acknowledgement that a default had been made with respect to a provision in the mortgage. Stated differently, in order to meet the requirement under the statute that a notice set forth the default for which foreclosure was made, the notice is required to state the specific default that occurred. Despite the creditor's policy arguments to the contrary, the court's interpretation gave effect to the words of the statute. *Davis v. Pennymac Loan Servs., LLC*, 2020 Ark. 180, 599 S.W.3d 128 (2020).

18-50-116. Miscellaneous provisions.

CASE NOTES

Cited: *Sims v. Fay Servicing*, 2020 Ark. App. 242 (2020).

SUBTITLE 5. CIVIL ACTIONS

CHAPTER 61

STATUTES OF LIMITATIONS

18-61-101. Actions to recover land, tenements, or hereditaments.

CASE NOTES

ANALYSIS

Adverse Possession.
—Continuity of Possession.

Adverse Possession.

—Continuity of Possession.

A prescriptive easement may be created over a ditch or waterway and the circuit court did not err by finding that the adjoining landowner proved the elements of a prescriptive easement as to the road and the ditch, despite the ditch being used

only when the road flooded; even a member of the appellant hunting club admitted that the adjoining landowner had continuously used the road and “regularly” used the ditch, the adjoining landowner took steps to maintain the property, and there was no evidence of attempted obstruction of the use between 2005 and 2014, a period in excess of the seven-year prescriptive period required. Five Forks Hunting Club, LLC v. Nixon Family P’ship, 2019 Ark. App. 371, 584 S.W.3d 685 (2019).

TITLE 19

PUBLIC FINANCE

CHAPTER.

5. REVENUE STABILIZATION LAW.
6. REVENUE CLASSIFICATION LAW.
11. PURCHASING AND CONTRACTS.

CHAPTER 5

REVENUE STABILIZATION LAW

SUBCHAPTER.

3. GENERAL REVENUE OPERATING FUNDS AND FUND ACCOUNTS.
4. DISTRIBUTION OF GENERAL REVENUES.
11. TRUST FUNDS CONTINUED.
12. MISCELLANEOUS FUNDS CONTINUED.

SUBCHAPTER 3 — GENERAL REVENUE OPERATING FUNDS AND FUND ACCOUNTS

SECTION.

- 19-5-303. Institutions of higher education funds.
- 19-5-306. Department of Human Services Fund.

SECTION.

- 19-5-312. State Services for the Blind Fund.

Effective Dates. Acts 2020, No. 129, § 11: July 1, 2020. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2020 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2020 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2020."

Acts 2020, No. 168, § 10: July 1, 2020. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2020 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2020 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2020."

19-5-303. Institutions of higher education funds.

(a) UNIVERSITY OF ARKANSAS FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas Fund".

(2) The University of Arkansas Fund shall be used for the maintenance, operation, and improvement of the University of Arkansas, including the Fayetteville campus, the University of Arkansas Cooperative Extension Service, the University of Arkansas agricultural experiment stations, the Graduate Institute of Technology, the Arkansas Archeological Survey, and for such other related and miscellaneous programs as may be provided by law.

(3) The University of Arkansas Fund shall consist of:

(A) Those general revenues that may be provided by law;

(B) Those special revenues as set out in §§ 19-6-301(45), 19-6-301(229), and 19-6-301(232); and

(C) Funds received from the Budget Stabilization Trust Fund as authorized by § 19-5-501.

(b) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas Medical Center Fund".

(2) The University of Arkansas Medical Center Fund is to be used for the maintenance, operation, and improvement of the University of Arkansas for Medical Sciences and its various divisions and programs, including the area health education centers and physician extender programs.

- (3) The University of Arkansas Medical Center Fund shall consist of:
- (A) Those general revenues as may be provided by law;
 - (B) Those special revenues as set out in § 19-6-301(224); and
 - (C) Any other funds made available for the support of the University of Arkansas for Medical Sciences which are required to be deposited into the State Treasury.

(c) UNIVERSITY OF ARKANSAS AT LITTLE ROCK FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas at Little Rock Fund".

(2) The University of Arkansas at Little Rock Fund shall be used for the maintenance, operation, and improvement of the Little Rock campus of the University of Arkansas and its various divisions and programs, including the Arkansas Economic Development Institute.

- (3) The University of Arkansas at Little Rock Fund shall consist of:

- (A) Those general revenues as may be provided by law;
- (B) Those special revenues as set out in § 19-6-301(229); and
- (C) Any other funds made available for the support of the University of Arkansas at Little Rock which are required to be deposited into the State Treasury by law.

(d) UNIVERSITY OF ARKANSAS AT MONTICELLO FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas at Monticello Fund".

(2) The University of Arkansas at Monticello Fund shall be used for the maintenance, operation, and improvement of the Monticello campus of the University of Arkansas and its various divisions, the University of Arkansas at Monticello College of Technology-Crossett, and the University of Arkansas at Monticello College of Technology-McGehee.

- (3) The University of Arkansas at Monticello Fund shall consist of:

- (A) Those general revenues as may be provided by law;
- (B) The June 30, 2003, balances in the Forest Echoes Technical Institute Fund Account and the Great Rivers Comprehensive Lifelong Learning Center Fund Account; and
- (C) Any other funds made available for the support of the University of Arkansas at Monticello which are required to be deposited into the State Treasury by law.

(e) UNIVERSITY OF ARKANSAS AT PINE BLUFF FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas at Pine Bluff Fund".

(2) The University of Arkansas at Pine Bluff Fund shall be used for the maintenance, operation, and improvement of the Pine Bluff campus of the University of Arkansas.

- (3) The University of Arkansas at Pine Bluff Fund shall consist of:

- (A) Those general revenues as may be provided by law; and
- (B) Any other funds made available for the support of the University of Arkansas at Pine Bluff and its various divisions, including the

special teacher training program, which are required to be deposited into the State Treasury by law.

(f) ARKANSAS STATE UNIVERSITY FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas State University Fund".

(2) The Arkansas State University Fund shall be used for the maintenance, operation, and improvement of Arkansas State University.

(3) The Arkansas State University Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Arkansas State University which are required to be deposited into the State Treasury by law.

(g) ARKANSAS STATE UNIVERSITY — BEEBE FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas State University — Beebe Fund".

(2) The Arkansas State University — Beebe Fund shall be used for the maintenance, operation, and improvement of Arkansas State University-Beebe, including Arkansas State Technical Institute, Arkansas State University-Searcy, and Arkansas State University-Heber Springs.

(3) The Arkansas State University — Beebe Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Arkansas State University-Beebe which are required to be deposited into the State Treasury by law.

(h) ARKANSAS TECH UNIVERSITY FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas Tech University Fund".

(2) The Arkansas Tech University Fund shall be used for the maintenance, operation, and improvement of Arkansas Tech University.

(3) The Arkansas Tech University Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Arkansas Tech University which are required to be deposited into the State Treasury by law.

(i) HENDERSON STATE UNIVERSITY FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Henderson State University Fund".

(2) The Henderson State University Fund shall be used for the maintenance, operation, and improvement of Henderson State University, including the nursing program.

(3) The Henderson State University Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Henderson State University which are required to be deposited into the State Treasury by law.

(j) SOUTHERN ARKANSAS UNIVERSITY FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Southern Arkansas University Fund".

(2) The Southern Arkansas University Fund shall be used for the maintenance, operation, and improvement of Southern Arkansas University.

(3) The Southern Arkansas University Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Southern Arkansas University and its programs which are required to be deposited into the State Treasury by law.

(k) UNIVERSITY OF CENTRAL ARKANSAS FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Central Arkansas Fund".

(2) The University of Central Arkansas Fund shall be used for the maintenance, operation, and improvement of the University of Central Arkansas.

(3) The University of Central Arkansas Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of the University of Central Arkansas which are required to be deposited into the State Treasury by law.

(l) UNIVERSITY OF ARKANSAS AT FORT SMITH FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas at Fort Smith Fund".

(2) The University of Arkansas at Fort Smith Fund shall be used for the maintenance, operation, and improvement of the University of Arkansas at Fort Smith.

(3) The University of Arkansas at Fort Smith Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of the University of Arkansas at Fort Smith which are required to be deposited into the State Treasury by law.

(m) NORTH ARKANSAS COLLEGE FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "North Arkansas College Fund".

(2) The North Arkansas College Fund shall be used for the maintenance, operation, and improvement of North Arkansas College.

(3) The North Arkansas College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of North Arkansas College which are required to be deposited into the State Treasury by law.

(n) EAST ARKANSAS COMMUNITY COLLEGE FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "East Arkansas Community College Fund".

(2) The East Arkansas Community College Fund shall be used for the maintenance, operation, and improvement of East Arkansas Community College.

(3) The East Arkansas Community College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of East Arkansas Community College which are required to be deposited into the State Treasury by law.

(o) ARKANSAS NORTHEASTERN COLLEGE FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas Northeastern College Fund".

(2) The Arkansas Northeastern College Fund shall be used for the maintenance, operation, and improvement of Arkansas Northeastern College.

(3) The Arkansas Northeastern College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Arkansas Northeastern College which are required to be deposited into the State Treasury by law.

(p) PHILLIPS COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Phillips Community College of the University of Arkansas Fund".

(2) The Phillips Community College of the University of Arkansas Fund shall be used for the maintenance, operation, and improvement of Phillips Community College of the University of Arkansas, including the Stuttgart and DeWitt campuses.

(3) The Phillips Community College of the University of Arkansas Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Phillips Community College of the University of Arkansas which are required to be deposited into the State Treasury by law.

(q) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT RICH MOUNTAIN FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas Community College at Rich Mountain Fund".

(2) The University of Arkansas Community College at Rich Mountain Fund shall be used for the maintenance, operation, and improve-

ment of the University of Arkansas Community College at Rich Mountain.

(3) The University of Arkansas Community College at Rich Mountain Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of the University of Arkansas Community College at Rich Mountain which are required to be deposited into the State Treasury by law.

(r) NORTHWEST ARKANSAS COMMUNITY COLLEGE FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Northwest Arkansas Community College Fund".

(2) The Northwest Arkansas Community College Fund shall be used for the maintenance, operation, and improvement of Northwest Arkansas Community College.

(3) The Northwest Arkansas Community College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Northwest Arkansas Community College which are required to be deposited into the State Treasury by law.

(s) SOUTH ARKANSAS COMMUNITY COLLEGE FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "South Arkansas Community College Fund".

(2) The South Arkansas Community College Fund shall be used for the maintenance, operation, and improvement of South Arkansas Community College.

(3) The South Arkansas Community College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of South Arkansas Community College which are required to be deposited into the State Treasury by law.

(t) SAU-TECH FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "SAU-Tech Fund".

(2) The SAU-Tech Fund shall be used for the maintenance, operation, and improvement of SAU-Tech, the Arkansas Fire Training Academy, and the Arkansas Environmental Training Academy.

(3) The SAU-Tech Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of SAU-Tech and its programs which are required to be deposited into the State Treasury by law.

(u) ARKANSAS STATE UNIVERSITY MID-SOUTH FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas State University Mid-South Fund".

(2) The Arkansas State University Mid-South Fund shall be used for the maintenance, operation, and improvement of Arkansas State University Mid-South.

(3) The Arkansas State University Mid-South Fund shall consist of:

(A) Those general revenues as may be provided by law;

(B) Those special revenues as set out in § 19-6-301(183); and

(C) Any other funds made available for the support of Arkansas State University Mid-South which are required to be deposited into the State Treasury by law.

(v) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT HOPE-TEXARKANA FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas Community College at Hope-Texarkana Fund".

(2) The University of Arkansas Community College at Hope-Texarkana Fund shall be used for the maintenance, operation, and improvement of the University of Arkansas Community College at Hope-Texarkana.

(3) The University of Arkansas Community College at Hope-Texarkana Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of the University of Arkansas Community College at Hope-Texarkana which are required to be deposited into the State Treasury by law.

(w) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT BATESVILLE FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas Community College at Batesville Fund".

(2) The University of Arkansas Community College at Batesville Fund shall be used for the maintenance, operation, and improvement of the University of Arkansas Community College at Batesville.

(3) The University of Arkansas Community College at Batesville Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of the University of Arkansas Community College at Batesville which are required to be deposited into the State Treasury by law.

(x) HIGHER EDUCATION INSTITUTIONS PERFORMANCE FUND.

(1) The Higher Education Institutions Performance Fund shall be used to provide additional support for institutions of higher education on the basis of institutional performance as determined by the Arkansas Higher Education Coordinating Board and reported to the Legislative Council.

(2) The Higher Education Institutions Performance Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds provided by law.

(y) ARKANSAS STATE UNIVERSITY — NEWPORT FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas State University — Newport Fund".

(2) The Arkansas State University — Newport Fund shall be used for the maintenance, operation, and improvement of Arkansas State University — Newport.

(3) The Arkansas State University — Newport Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Arkansas State University — Newport which are required to be deposited into the State Treasury by law.

(z) [Repealed.]

(aa) COSSATOT COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Cossatot Community College of the University of Arkansas Fund".

(2) The Cossatot Community College of the University of Arkansas Fund shall be used for the maintenance, operation, and improvement of Cossatot Community College of the University of Arkansas.

(3) The Cossatot Community College of the University of Arkansas Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Cossatot Community College of the University of Arkansas which are required to be deposited into the State Treasury by law.

(bb) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT MORRILTON FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "University of Arkansas Community College at Morrilton Fund".

(2) The University of Arkansas Community College at Morrilton Fund shall be used for the maintenance, operation, and improvement of the University of Arkansas Community College at Morrilton.

(3) The University of Arkansas Community College at Morrilton Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of the University of Arkansas Community College at Morrilton which are required to be deposited into the State Treasury by law.

(cc) ARKANSAS STATE UNIVERSITY-MOUNTAIN HOME FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas State University-Mountain Home Fund".

(2) The Arkansas State University-Mountain Home Fund shall be used for the maintenance, operation, and improvement of Arkansas State University-Mountain Home.

(3) The Arkansas State University-Mountain Home Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Arkansas State University-Mountain Home which are required to be deposited into the State Treasury by law.

(dd) NATIONAL PARK COLLEGE FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "National Park College Fund".

(2) The National Park College Fund shall be used for the maintenance, operation, and improvement of National Park College.

(3) The National Park College Fund shall consist of:

(A) Those general revenues transferred each month from the Garland County Community College Fund [repealed];

(B) The June 30, 2003, balances in the Garland County Community College Fund [repealed]; and

(C) Any other funds made available for the support of National Park College which are required to be deposited into the State Treasury by law.

(ee) SCHOOL FOR MATH, SCIENCES, AND ARTS FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "School for Math, Sciences, and Arts Fund".

(2) The School for Math, Sciences, and Arts Fund shall be used to provide for the maintenance, operation, and improvement required by the Arkansas School for Mathematics, Sciences, and the Arts in carrying out its powers, functions, and duties as set out by law.

(3) The School for Math, Sciences, and Arts Fund shall consist of:

(A) Moneys allocated and transferred from the Educational Excellence Trust Fund;

(B) Any general revenues as may be provided under this chapter; and

(C) Any other moneys as may be authorized by law.

(ff) OZARKA COLLEGE FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Ozarka College Fund".

(2) The Ozarka College Fund shall be used for the maintenance, operation, and improvement of Ozarka College.

(3) The Ozarka College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Ozarka College which are required to be deposited into the State Treasury by law.

(gg) SOUTHEAST ARKANSAS COLLEGE FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Southeast Arkansas College Fund".

(2) The Southeast Arkansas College Fund shall be used for the maintenance, operation, and improvement of Southeast Arkansas College.

(3) The Southeast Arkansas College Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of Southeast Arkansas College which are required to be deposited into the State Treasury by law.

(hh) ARKANSAS STATE UNIVERSITY THREE RIVERS FUND.

(1) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Arkansas State University Three Rivers Fund".

(2) The Arkansas State University Three Rivers Fund shall be used for the maintenance, operation, and improvement of the Arkansas State University Three Rivers.

(3) The Arkansas State University Three Rivers Fund shall consist of:

(A) Those general revenues as may be provided by law; and

(B) Any other funds made available for the support of the Arkansas State University Three Rivers which are required to be deposited into the State Treasury by law.

History. Acts 1973, No. 750, § 6; 1975, No. 868, §§ 8, 9; 1977, No. 955, §§ 12, 13; 1979, No. 1013, § 9; 1979, No. 1077, § 3; 1981, No. 938, § 7; 1983, No. 801, §§ 5-7, 10; 1985, No. 888, § 8; A.S.A. 1947, § 13-521; Acts 1989, No. 629, § 4; 1991, No. 335, §§ 1, 2; 1991, No. 1135, § 2; 1993, No. 447, § 8; 1993, No. 1073, §§ 2, 3; 1995, No. 1163, §§ 6-9; 1995, No. 1296, § 70; 1997, No. 1248, §§ 6, 7; 1999, No. 1463, §§ 3-6; 2001, No. 90, § 9; 2001, No. 292, § 12; 2001, No. 297, § 5; 2003, No. 1290, § 4; 2003 (1st Ex. Sess.), No. 55, §§ 2, 3, 27, 29, 31, 34; 2005, No. 2282, § 3;

2005, No. 2316, § 3; 2007, No. 1032, §§ 4-6; 2007, No. 1201, §§ 4-6; 2009, No. 1440, § 1; 2009, No. 1441, § 1; 2011, No. 1095, § 2; 2011, No. 1115, § 2; 2012, No. 271, § 1; 2012, No. 287, § 1; 2013, No. 1131, § 1; 2016, No. 140, § 11; 2016, No. 141, § 11; 2017, No. 179, § 9; 2017, No. 1083, § 4; 2017, No. 1127, § 4; 2019, No. 204, § 3; 2020, No. 129, § 6.

Amendments. The 2020 amendment substituted "Arkansas State University Three Rivers" for "College of the Ouachitas" throughout (hh).

19-5-306. Department of Human Services Fund.

The Department of Human Services Fund shall consist of the following fund accounts and funds made available for the support of the Department of Human Services and shall be used for the same purposes as set out for the following fund accounts:

(1) BEHAVIORAL HEALTH SERVICES FUND ACCOUNT.

(A) The Behavioral Health Services Fund Account shall be used for the maintenance, operation, and improvement required by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services in carrying out the powers, functions, and duties, as set out in § 20-46-101 et seq. and § 25-10-101 et seq., or other duties imposed by law upon the Arkansas State Hospital.

(B) The Behavioral Health Services Fund Account shall consist of:

- (i) Those general revenues as may be provided by law;
- (ii) Nonrevenue income derived from services provided by the Arkansas State Hospital;
- (iii) Federal reimbursement received on account of eligible expenditures;
- (iv) Paying patient fees and other funds as may be provided by law;
- (v) Funds received from local sources for community program matching; and
- (vi) Funds received from the Division of Medical Services;

(2) DEVELOPMENTAL DISABILITIES SERVICES FUND ACCOUNT.

(A) The Developmental Disabilities Services Fund Account shall be used for the maintenance, operation, and improvement required by the Division of Developmental Disabilities Services in carrying out the powers, functions, and duties, as set out in § 20-48-101 et seq. and § 25-10-101 et seq., and all laws amendatory thereto, or other duties imposed by law upon the human development centers or the Board of Developmental Disabilities Services.

(B) The Developmental Disabilities Services Fund Account shall consist of:

- (i) Those general revenues as may be provided by law;
- (ii) Nonrevenue income derived by services provided by the human development centers;
- (iii) Funds received from local sources to provide matching for community developmental disabilities services programs; and
- (iv) Reimbursement received from the Division of Medical Services;

(3) MEDICAL SERVICES FUND ACCOUNT.

(A) The Medical Services Fund Account shall be used for the maintenance, operation, and improvement required by the Division of Medical Services in carrying out the powers, functions, and duties as set out in § 20-76-101 et seq. and § 25-10-101 et seq., including the support and administration costs of the expanded Medical Services Program of the Division of Medical Services for the working poor in Arkansas.

(B) The Medical Services Fund Account shall consist of:

- (i) Those general revenues as may be provided by law;
- (ii) Nonrevenue income derived from services provided by the Division of Medical Services;
- (iii) Federal reimbursement received on account of eligible expenditures for the administration of medical services programs;
- (iv) Funds derived from fees collected pursuant to the provisions of §§ 20-10-213 — 20-10-228 to be used for the maintenance and operation of the long-term care facility licensure program of the Division of Medical Services; and
- (v) Any other nonfederal grant funds provided by law.

(C) Other federal reimbursement funds received by the Division of Medical Services shall be deposited into a separate federal reimbursement fund on the books of the Treasurer of State;

(4) YOUTH SERVICES FUND ACCOUNT.

(A) The Youth Services Fund Account shall be used for the maintenance, operation, and improvement required by the Division of Youth Services in carrying out the powers, functions, and duties as set out in § 9-28-201 et seq., including serious offender and community-based programs and the youth service centers.

(B) The Youth Services Fund Account shall consist of:

(i) Those general revenues as may be provided by law;

(ii) Nonrevenue income derived from services provided by the various programs of the Division of Youth Services; and

(iii) Any other nonfederal grants-in-aid funds provided by law.

(C) Other federal reimbursement received by the Division of Youth Services shall be deposited into a separate federal reimbursement fund on the books of the Treasurer of State, including those received on account of eligible expenditures of the youth service centers' vocational education programs;

(5) CHILDREN AND FAMILY SERVICES FUND ACCOUNT.

(A) The Children and Family Services Fund Account shall be used for the maintenance, operation, and improvement required by the Division of Children and Family Services in carrying out those functions, powers, and duties as set out in § 25-10-101 et seq.

(B) The Children and Family Services Fund Account shall consist of:

(i) Those general revenues as may be provided by law;

(ii) Nonrevenue income derived from services provided by the Division of Children and Family Services; and

(iii) Any other nonfederal grant-in-aid funds provided by law;

(6) DEPARTMENT OF HUMAN SERVICES ADMINISTRATION FUND ACCOUNT.

(A) The Department of Human Services Administration Fund Account shall be used for the maintenance, operation, and improvement required by the office of the Secretary of the Department of Human Services in carrying out the administrative duties and shared business services of the Department of Human Services as set out in and under the restrictions and provisions of § 20-46-301 and § 25-10-101 et seq.

(B) The Department of Human Services Administration Fund Account shall consist of:

(i) Those general revenues as may be provided by law;

(ii) Nonrevenue income derived from services provided by these divisions of the Department of Human Services; and

(iii) Any other funds, including reimbursement for costs incurred by these divisions from the various other Department of Human Services' divisions from nongeneral revenue sources, as may be required and provided by law;

(7) AGING AND ADULT SERVICES FUND ACCOUNT.

(A) The Aging and Adult Services Fund Account shall be used for the maintenance, operation, and improvement required by the Division of Aging, Adult, and Behavioral Health Services of the Depart-

ment of Human Services in carrying out the powers, functions, and duties as imposed by law, and § 25-10-101 et seq., upon the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services.

(B) The Aging and Adult Services Fund Account shall consist of:

(i) Those general revenues as may be provided by law;

(ii) Fifty percent (50%) of those special revenues as specified in § 19-6-301(201), there to be used to assist the Meals on Wheels program, and any other special revenues as may be provided by law;

(iii) Nonrevenue income derived from services provided by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services;

(iv) Federal reimbursement received on account of eligible expenditures of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services; and

(v) The first three million dollars (\$3,000,000) each year of the net revenues derived from the additional cigarette tax levied in § 26-57-802, to be used exclusively for transportation services benefiting the elderly, including the Meals on Wheels program;

(8) [Repealed.]

(9) COUNTY OPERATIONS FUND ACCOUNT.

(A) The County Operations Fund Account shall be used for the maintenance, operation, and improvement required by the Division of County Operations in carrying out the powers, functions, and duties as set out in § 25-10-102.

(B) The County Operations Fund Account shall consist of:

(i) Those general revenues as may be provided by law;

(ii) Nonrevenue income derived from services provided by the various programs of the Division of County Operations;

(iii) Any other nonfederal grants-in-aid funds provided by law;

(iv) Funds received from the Division of Elementary and Secondary Education for surplus commodities; and

(v) Federal reimbursement received on account of eligible expenditures of the Division of County Operations.

(C) Other federal reimbursement funds received by the Division of County Operations shall be deposited into a separate federal reimbursement fund on the books of the Treasurer of State;

(10) DEPARTMENT OF HUMAN SERVICES GRANTS FUND ACCOUNT.

(A) The Department of Human Services Grants Fund Account shall be used for the following grant programs to consist of general revenues and any other nonfederal funds, as may be appropriated by the General Assembly:

(i) Children's Medical Services;

(ii) Food Stamp Employment and Training Program;

(iii) Aid to the Aged, Blind, and Disabled;

(iv) Transitional Employment Assistance Program;

(v) Private nursing home care;

(vi) Infant Infirmary — nursing home care;

- (vii) Public Nursing Home Care;
- (viii) Prescription drugs;
- (ix) Hospital and Medical Services;
- (x) Child Health and Family Life Institute;
- (xi) Community Services Block Grant Program;
- (xii) ARKids First Program;
- (xiii) Child health management services; and
- (xiv) Child Care Grant.

(B) Federal reimbursement received by the Department of Human Services shall be deposited into separate funds on the books of the Treasurer of State;

(11) LONG-TERM CARE FACILITY RECEIVERSHIP FUND ACCOUNT.

(A) The Long-Term Care Facility Receivership Fund Account shall be used for paying the expenses of receivers appointed under the Arkansas Long-Term Care Facility Receivership Law, § 20-10-901 et seq., as administered and disbursed under the direction of the Secretary of the Department of Human Services.

(B) The Long-Term Care Facility Receivership Fund Account shall consist of:

(i) Those general revenues and such other funds as may be provided by law; and

(ii) The balance in the Long-Term Care Facility Receivership Fund Account which remains at the end of a fiscal year;

(12) CHILD CARE AND EARLY CHILDHOOD EDUCATION FUND ACCOUNT.

(A) The Child Care and Early Childhood Education Fund Account shall be used for the maintenance, operation, and improvement required by the Division of Child Care and Early Childhood Education in carrying out those functions, powers, and duties as set out in the Childcare Facility Licensing Act, § 20-78-201 et seq., or other duties imposed by law upon the Division of Child Care and Early Childhood Education.

(B) The Child Care and Early Childhood Education Fund Account shall consist of:

(i) Those general revenues as may be provided by law;

(ii) Nonrevenue income derived from services provided by the Division of Child Care and Early Childhood Education; and

(iii) Any other nonfederal grant-in-aid funds provided by law; and

(13) PROVIDER SERVICES AND QUALITY ASSURANCE FUND ACCOUNT.

(A) The Provider Services and Quality Assurance Fund Account shall be used for the maintenance, operation, and improvement required by the Division of Provider Services and Quality Assurance in carrying out its powers, functions, and duties.

(B) The Provider Services and Quality Assurance Fund Account shall consist of:

(i) Those general revenues as may be provided by law;

(ii) Nonrevenue income derived from services provided by the Division of Provider Services and Quality Assurance;

(iii) Federal reimbursement received on account of eligible expenditures for the administration of medical services programs or other programs; and

(iv) Any other nonfederal grant funds provided by law.

History. Acts 1973, No. 750, § 6; 1975, No. 868, § 3; 1977, No. 955, §§ 4-6; 1977 (1st Ex. Sess.), No. 7, § 2; 1979, No. 1115, § 4; 1981, No. 938, §§ 2, 3; 1983, No. 801, §§ 4-15; 1985, No. 888, § 5; A.S.A. 1947, § 13-521; Acts 1987, No. 928, § 1; 1989, No. 629, § 5; 1991, No. 1135, §§ 4, 16; 1993, No. 1073, §§ 4, 24; 1994 (2nd Ex. Sess.), No. 27, § 1; 1995, No. 1163, § 11; 1997, No. 1007, § 3; 1997, No. 1360, § 82; 1999, No. 1463, § 7; 1999, No. 1537,

§ 100; 2003 (1st Ex. Sess.), No. 17, § 10; 2003 (1st Ex. Sess.), No. 55, §§ 6-8; 2007, No. 1032, §§ 8-10; 2007, No. 1201, §§ 8-10; 2009, No. 1414, § 8; 2011, No. 42, § 4; 2011, No. 1095, § 5; 2011, No. 1115, § 5; 2017, No. 913, §§ 1, 47, 48; 2018, No. 259, § 5; 2018, No. 260, § 5; 2019, No. 910, §§ 5160, 5161; 2020, No. 168, § 5.

Amendments. The 2020 amendment repealed (8).

19-5-312. State Services for the Blind Fund.

(a) The State Services for the Blind Fund shall be used for the maintenance, operation, and improvement required by the Division of State Services for the Blind in carrying out the powers, functions, and duties as set out in § 25-10-201 et seq. or other duties imposed by law upon the division.

(b) The State Services for the Blind Fund shall consist of:

- (1) Those general revenues provided by law;
- (2) Nonrevenue income derived from services provided by programs of the division; and
- (3) Any other nonfederal grant funds provided by law.

History. Acts 2020, No. 168, § 6.

SUBCHAPTER 4 — DISTRIBUTION OF GENERAL REVENUES

SECTION.

19-5-401. Allocations for fiscal year 2020-2021 and thereafter.

19-5-402. Maximum allocations of rev-

enues for fiscal year 2020-2021 and thereafter.

Effective Dates. Identical Acts 2020, Nos. 186 and 187, § 7: July 1, 2020.

Identical Acts 2020, Nos. 186 and 187, § 8: July 1, 2020. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that changes in the state's fiscal laws must take effect at the beginning of the fiscal year; and that it is necessary for this

act to become effective on July 1, 2020, to avoid a lapse in critical and essential services that state government provides to the citizens of this state at the beginning of the next fiscal year. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2020."

19-5-401. Allocations for fiscal year 2020-2021 and thereafter.

Commencing with the fiscal year beginning July 1, 2020, and each fiscal year thereafter, the Treasurer of State shall transfer all remaining general revenues available for distribution on the last day of business in July 2020, and on the last day of business in each calendar month thereafter during the fiscal year to the various funds and fund accounts participating in general revenues in the proportions of the maximum allocation as the individual allocation to the fund or fund account bears to the total of the maximum allocation as provided in § 19-5-402(a)-(e).

History. Acts 1973, No. 750, § 11; 1974 (1st Ex. Sess.), No. 90, § 1; 1975, No. 868, § 15; 1977, No. 955, § 1; 1977 (1st Ex. Sess.), No. 7, § 1; 1979, No. 1115, § 1; 1981, No. 937, § 1; 1983, No. 801, § 12; 1983 (1st Ex. Sess.), No. 119, § 1; 1985, No. 888, § 25; A.S.A. 1947, § 13-515; Acts 1987, No. 928, § 15; 1989, No. 629, § 14; 1991, No. 1135, § 12; 1993, No. 1073, § 30; 1995, No. 1163, § 31; 1997, No. 1248, § 28; 1999, No. 1463, § 30; 2001, No. 1646, § 29; 2003 (1st Ex. Sess.), No. 55, § 39; 2005, No. 2282, § 16; 2005, No. 2316, § 16; 2007, No. 1032, § 34; 2007, No. 1201, § 34; 2009, No. 1440, § 7; 2009, No. 1441, § 7; 2010, No. 262, § 12; 2010, No. 296, § 12; 2011, No. 1095, § 16; 2011, No. 1115, § 16; 2012, No. 271, § 6; 2012, No. 287, § 6; 2013, No. 1516, § 3; 2013, No. 1517, § 3; 2014, No. 290, § 9; 2014, No. 299, § 9; 2015, No. 1144, § 9; 2015, No. 1145, § 9; 2016, No. 242, § 3; 2016, No. 270, § 3; 2017, No. 1083, § 22; 2017, No. 1127, § 22; 2018, No. 259, § 3; 2018,

No. 260, § 3; 2019, No. 998, § 8; 2019, No. 1024, § 8; 2020, No. 186, § 4; 2020, No. 187, § 4.

A.C.R.C. Notes. Identical Acts 2020, Nos. 186 and 187, § 1, provided: "The purpose of this act is to amend the Revenue Stabilization Law and to create funds, to repeal funds, and to make transfers to and from funds and fund accounts."

Identical Acts 2020, Nos. 186 and 187, § 6, provided: "DUPLICATE ACTS. If HB1096 and SB83 of the 2020 Fiscal Session of the 92nd General Assembly are both enacted and adopted by the 92nd General Assembly in identical form, then the last Act passed or latest expression shall supersede the other."

Amendments. The 2020 amendment by identical acts Nos. 186 and 187 substituted "2020-2021" for "2019-2020" in the section heading; substituted "July 1, 2020" for "July 1, 2019"; substituted "July 2020" for "July 2019"; and substituted "§ 19-5-402(a)-(e)" for "§ 19-5-402(a)-(c)".

19-5-402. Maximum allocations of revenues for fiscal year 2020-2021 and thereafter.

(a)(1) **ALLOCATION A.** The Treasurer of State shall first make monthly allocations in the proportions set out in this subsection to the funds and fund accounts listed below until there has been transferred a total of five billion two hundred sixty-one million one hundred eighty-three thousand seven hundred eight dollars (\$5,261,183,708) or so much thereof as may become available; provided, that the Treasurer of State shall make such monthly allocations in accordance with each fund or fund account's proportionate part of the total of all such allocations set forth in this subsection:

Name of Fund or Fund Account	Maximum Allocation
PUBLIC SCHOOL FUND	
(1) Division of Elementary and Secondary Education Public School Fund Account	\$2,078,286,320
(2) State Library Public School Fund Account	\$ 4,795,631
(3) Division of Career and Technical Education Public School Fund Account	\$ 27,169,899
EDUCATION FUND	
(1) Division of Elementary and Secondary Education Fund Account	\$ 13,894,450
(2) Educational Facilities Partnership Fund Account	\$ 39,737,503
(3) Division of Public School Academic Facilities and Transportation Fund Account	\$ 2,228,834
(4) Educational Television Fund Account	\$ 4,655,037
(5) School for the Blind Fund Account	\$ 6,160,910
(6) School for the Deaf Fund Account	\$ 8,952,818
(7) State Library Fund Account	\$ 3,074,283
(8) Division of Career and Technical Education Fund Account	\$ 8,500
(9) Rehabilitation Services Fund Account	\$ 10,159,546
Technical Institutes:	
(10) Northwest Technical Institute Fund Account	\$ 2,684,145
(11) Riverside Vocational Technical School Fund Account	\$ 2,004,850
DEPARTMENT OF HUMAN SERVICES FUND	
(1) Department of Human Services Administration Fund Account	\$ 20,222,380
(2) Children and Family Services Fund Account	\$ 106,434,324
(3) Child Care and Early Childhood Education Fund Account	\$ 1,797,685
(4) Youth Services Fund Account	\$ 43,662,765
(5) Developmental Disabilities Services Fund Account	\$ 56,950,665
(6) Medical Services Fund Account	\$ 1,987,198
(7) Department of Human Services Grants Fund Account	\$1,247,554,693
(8) Behavioral Health Services Fund Account	\$ 84,099,536
(9) Provider Services and Quality Assurance Fund Account	\$ 4,579,498
(10) County Operations Fund Account	\$ 40,976,754

Name of Fund or Fund Account	Maximum Allocation
STATE GENERAL GOVERNMENT FUND	
(1) Division of Arkansas Heritage Fund Account	\$ 6,389,884
(2) Department of Agriculture Fund Account	\$ 15,064,953
(3) Department of Labor and Licensing Fund Account	\$ 2,745,106
(4) Division of Higher Education Fund Account	\$ 9,847,629
(5) Higher Education Grants Fund Account	\$ 34,014,846
(6) Arkansas Economic Development Commission Fund Account	\$ 12,594,863
(7) Division of Correction Inmate Care and Custody Fund Account	\$ 353,771,903
(8) Division of Community Correction Fund Account	\$ 81,814,316
(9) Department of the Military Fund Account	\$ 5,713,274
(10) Parks and Tourism Fund Account	\$ 17,670,095
(11) Division of Environmental Quality Fund Account	\$ 3,370,609
(12) Miscellaneous Agencies Fund Account	\$ 55,100,035
COUNTY AID FUND	\$ 18,214,324
COUNTY JAIL REIMBURSEMENT FUND	\$ 16,461,053
CRIME INFORMATION SYSTEM FUND	\$ 3,195,654
CHILD SUPPORT ENFORCEMENT FUND	\$ 11,036,445
PUBLIC HEALTH FUND	\$ 70,461,440
PERFORMANCE FUND	\$ -
MOTOR VEHICLE ACQUISITION REVOLVING FUND	\$ -
MUNICIPAL AID FUND	\$ 24,966,284
DIVISION OF ARKANSAS STATE POLICE FUND	\$ 55,801,477
DIVISION OF WORKFORCE SERVICES FUND-TANF	\$ 3,285,114
DIVISION OF WORKFORCE SERVICES FUND-ADULT EDUCATION	\$ 804,976
STATE SERVICES FOR THE BLIND FUND ACCOUNT	\$ 1,671,239
SKILLS DEVELOPMENT FUND	\$ 3,203,435
INSTITUTIONS OF HIGHER EDUCATION	
(1) ARKANSAS STATE UNIVERSITY FUND	\$ 50,742,362
(2) ARKANSAS TECH UNIVERSITY FUND	\$ 28,379,264
(3) HENDERSON STATE UNIVERSITY FUND	\$ 16,176,319
(4) SOUTHERN ARKANSAS UNIVERSITY FUND	\$ 14,602,304
(5) UNIVERSITY OF ARKANSAS FUND	\$ 104,404,698

Name of Fund or Fund Account	Maximum Allocation
(6) UNIVERSITY OF ARKANSAS FUND-UA SYSTEM	\$ 2,957,552
(7) UNIVERSITY OF ARKANSAS FUND-ARCHEOLOGICAL SURVEY	\$ 2,013,882
(8) UNIVERSITY OF ARKANSAS FUND-DIVISION OF AGRICULTURE	\$ 55,930,117
(9) UNIVERSITY OF ARKANSAS FUND-CLINTON SCHOOL	\$ 1,986,361
(10) UNIVERSITY OF ARKANSAS FUND-CRIMINAL JUSTICE INSTITUTE	\$ 1,919,838
(11) SCHOOL FOR MATH, SCIENCES AND ARTS FUND	\$ 963,092
(12) UNIVERSITY OF ARKANSAS AT FORT SMITH FUND	\$ 17,295,121
(13) UNIVERSITY OF ARKANSAS AT LITTLE ROCK FUND	\$ 51,442,351
(14) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND	\$ 74,810,949
(15) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - CHILD ABUSE/RAPE/DOMESTIC VIOLENCE	\$ 635,996
(16) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - PEDIATRICS/PSYCHIATRIC RESEARCH	\$ 1,687,335
(17) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - CHILD SAFETY CENTER	\$ 623,525
(18) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - INDIGENT CARE	\$ 4,622,589
(19) UNIVERSITY OF ARKANSAS AT MONTICELLO FUND	\$ 13,577,420
(20) UNIVERSITY OF ARKANSAS AT PINE BLUFF FUND	\$ 22,280,280
(21) UNIVERSITY OF CENTRAL ARKANSAS FUND	\$ 46,965,206
(22) ARKANSAS NORTHEASTERN COLLEGE FUND	\$ 7,393,663
(23) ARKANSAS STATE UNIVERSITY - BEEBE FUND	\$ 9,988,213
(24) ARKANSAS STATE UNIVERSITY - MOUNTAIN HOME FUND	\$ 3,131,198
(25) ARKANSAS STATE UNIVERSITY - NEWPORT FUND	\$ 5,778,322
(26) COSSATOT COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND	\$ 2,954,633

Name of Fund or Fund Account	Maximum Allocation
(27) EAST ARKANSAS COMMUNITY COLLEGE FUND	\$ 7,007,659
(28) ARKANSAS STATE UNIVERSITY MID-SOUTH FUND	\$ 3,413,076
(29) ARKANSAS STATE UNIVERSITY MID-SOUTH FUND - ADTEC	\$ 1,320,900
(30) NATIONAL PARK COLLEGE FUND	\$ 7,498,431
(31) NORTH ARKANSAS COLLEGE FUND	\$ 6,636,016
(32) NORTHWEST ARKANSAS COMMUNITY COLLEGE FUND	\$ 10,346,862
(33) PHILLIPS COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND	\$ 7,640,389
(34) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT RICH MOUNTAIN FUND	\$ 3,027,201
(35) SAU - TECH FUND	\$ 4,735,275
(36) SAU - TECH FUND-ENVIRONMENTAL CONTROL CENTER	\$ 318,780
(37) SAU - TECH FUND-FIRE TRAINING ACADEMY	\$ 1,428,802
(38) SOUTH ARKANSAS COMMUNITY COLLEGE FUND	\$ 5,128,007
(39) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT BATESVILLE FUND	\$ 3,510,612
(40) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT HOPE-TEXARKANA FUND	\$ 4,240,731
(41) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT MORRILTON FUND	\$ 4,562,837
(42) BLACK RIVER TECHNICAL COLLEGE FUND	\$ 5,067,356
(43) ARKANSAS STATE UNIVERSITY THREE RIVERS FUND	\$ 2,950,245
(44) OZARKA COLLEGE FUND	\$ 2,591,465
(45) UNIVERSITY OF ARKANSAS - PULASKI TECHNICAL COLLEGE FUND	\$ 12,547,081
(46) SOUTHEAST ARKANSAS COLLEGE FUND	\$ 4,672,215

(2) Sixty million three hundred sixty-eight thousand five hundred ninety-three dollars (\$60,368,593), or so much thereof as is available shall be included and added to the amount distributed in subdivision (a)(1) of this section and shall be distributed by the Treasurer of State in monthly amounts with each allocation's proportion of the total of subdivision (a)(1) of this section and this subdivision (a)(2) to supplement the Restricted Reserve Fund.

(b) ALLOCATION A1. After making the maximum annual allocations provided for in subdivisions (a)(1) and (2) of this section, the

Treasurer of State shall then make allocations from the remaining general revenues available for distribution, as set forth in this subsection, to the funds and fund accounts listed below until there has been transferred a total of one hundred eighty-four million three hundred fifty-five thousand five hundred forty-six dollars (\$184,355,546) or so much thereof that may become available; provided, that the Treasurer of State shall make such monthly allocations in accordance with each fund or fund account's proportionate part of the total of all such allocations set forth in this subsection:

Name of Fund or Fund Account	Maximum Allocation
PUBLIC SCHOOL FUND	
(1) Division of Elementary and Secondary Education Public School Fund Account	\$109,383,490
(2) State Library Public School Fund Account	\$ -
(3) Division of Career and Technical Education Public School Fund Account	\$ -
EDUCATION FUND	
(1) Division of Elementary and Secondary Education Fund Account	\$ -
(2) Educational Facilities Partnership Fund Account	\$ 2,091,448
(3) Division of Public School Academic Facilities and Transportation Fund Account	\$ -
(4) Educational Television Fund Account	\$ -
(5) School for the Blind Fund Account	\$ -
(6) School for the Deaf Fund Account	\$ -
(7) State Library Fund Account	\$ -
(8) Division of Career and Technical Education Fund Account	\$ -
(9) Rehabilitation Services Fund Account	\$ -
Technical Institutes:	
(10) Northwest Technical Institute Fund Account	\$ -
(11) Riverside Vocational Technical School Fund Account	\$ -
DEPARTMENT OF HUMAN SERVICES FUND	
(1) Department of Human Services Administration Fund Account	\$ -
(2) Children and Family Services Fund Account	\$ -
(3) Child Care and Early Childhood Education Fund Account	\$ -
(4) Youth Services Fund Account	\$ -
(5) Developmental Disabilities Services Fund Account	\$ -
(6) Medical Services Fund Account	\$ -

Name of Fund or Fund Account	Maximum Allocation
(7) Department of Human Services Grants Fund Account	\$ 65,660,773
(8) Behavioral Health Services Fund Account	\$ -
(9) Provider Services and Quality Assurance Fund Account	\$ -
(10) County Operations Fund Account	\$ -

STATE GENERAL GOVERNMENT FUND

(1) Division of Arkansas Heritage Fund Account	\$ -
(2) Department of Agriculture Fund Account	\$ -
(3) Department of Labor and Licensing Fund Account	\$ -
(4) Division of Higher Education Fund Account	\$ -
(5) Higher Education Grants Fund Account	\$ -
(6) Arkansas Economic Development Commission Fund Account	\$ -
(7) Division of Correction Inmate Care and Custody Fund Account	\$ 7,219,835
(8) Division of Community Correction Fund Account	\$ -
(9) Department of the Military Fund Account	\$ -
(10) Parks and Tourism Fund Account	\$ -
(11) Division of Environmental Quality Fund Account	\$ -
(12) Miscellaneous Agencies Fund Account	\$ -

COUNTY AID FUND	\$ -
COUNTY JAIL REIMBURSEMENT FUND	\$ -
CRIME INFORMATION SYSTEM FUND	\$ -
CHILD SUPPORT ENFORCEMENT FUND	\$ -
PUBLIC HEALTH FUND	\$ -
PERFORMANCE FUND	\$ -
MOTOR VEHICLE ACQUISITION REVOLVING FUND	\$ -
MUNICIPAL AID FUND	\$ -
DIVISION OF ARKANSAS STATE POLICE FUND	\$ -
DIVISION OF WORKFORCE SERVICES FUND-TANF	\$ -
DIVISION OF WORKFORCE SERVICES FUND-ADULT EDUCATION	\$ -
STATE SERVICES FOR THE BLIND FUND ACCOUNT	\$ -
SKILLS DEVELOPMENT FUND	\$ -

INSTITUTIONS OF HIGHER EDUCATION

Name of Fund or Fund Account	Maximum Allocation
(1) ARKANSAS STATE UNIVERSITY FUND	\$ -
(2) ARKANSAS TECH UNIVERSITY FUND	\$ -
(3) HENDERSON STATE UNIVERSITY FUND	\$ -
(4) SOUTHERN ARKANSAS UNIVERSITY FUND	\$ -
(5) UNIVERSITY OF ARKANSAS FUND	\$ -
(6) UNIVERSITY OF ARKANSAS FUND-UA SYSTEM	\$ -
(7) UNIVERSITY OF ARKANSAS FUND-ARCHEOLOGICAL SURVEY	\$ -
(8) UNIVERSITY OF ARKANSAS FUND-DIVISION OF AGRICULTURE	\$ -
(9) UNIVERSITY OF ARKANSAS FUND-CLINTON SCHOOL	\$ -
(10) UNIVERSITY OF ARKANSAS FUND-CRIMINAL JUSTICE INSTITUTE	\$ -
(11) SCHOOL FOR MATH, SCIENCES AND ARTS FUND	\$ -
(12) UNIVERSITY OF ARKANSAS AT FORT SMITH FUND	\$ -
(13) UNIVERSITY OF ARKANSAS AT LITTLE ROCK FUND	\$ -
(14) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND	\$ -
(15) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - CHILD ABUSE/RAPE/DOMESTIC VIOLENCE	\$ -
(16) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - PEDIATRICS/PSYCHIATRIC RESEARCH	\$ -
(17) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - CHILD SAFETY CENTER	\$ -
(18) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - INDIGENT CARE	\$ -
(19) UNIVERSITY OF ARKANSAS AT MONTICELLO FUND	\$ -
(20) UNIVERSITY OF ARKANSAS AT PINE BLUFF FUND	\$ -
(21) UNIVERSITY OF CENTRAL ARKANSAS FUND	\$ -
(22) ARKANSAS NORTHEASTERN COLLEGE FUND	\$ -
(23) ARKANSAS STATE UNIVERSITY - BEEBE FUND	\$ -

Name of Fund or Fund Account	Maximum Allocation
(24) ARKANSAS STATE UNIVERSITY - MOUNTAIN HOME FUND	\$ -
(25) ARKANSAS STATE UNIVERSITY - NEWPORT FUND	\$ -
(26) COSSATOT COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND	\$ -
(27) EAST ARKANSAS COMMUNITY COLLEGE FUND	\$ -
(28) ARKANSAS STATE UNIVERSITY MID-SOUTH FUND	\$ -
(29) ARKANSAS STATE UNIVERSITY MID-SOUTH FUND - ADTEC	\$ -
(30) NATIONAL PARK COLLEGE FUND	\$ -
(31) NORTH ARKANSAS COLLEGE FUND	\$ -
(32) NORTHWEST ARKANSAS COMMUNITY COLLEGE FUND	\$ -
(33) PHILLIPS COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND	\$ -
(34) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT RICH MOUNTAIN FUND	\$ -
(35) SAU - TECH FUND	\$ -
(36) SAU - TECH FUND-ENVIRONMENTAL CONTROL CENTER	\$ -
(37) SAU - TECH FUND-FIRE TRAINING ACADEMY	\$ -
(38) SOUTH ARKANSAS COMMUNITY COLLEGE FUND	\$ -
(39) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT BATESVILLE FUND	\$ -
(40) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT HOPE-TEXARKANA FUND	\$ -
(41) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT MORRILTON FUND	\$ -
(42) BLACK RIVER TECHNICAL COLLEGE FUND	\$ -
(43) ARKANSAS STATE UNIVERSITY THREE RIVERS FUND	\$ -
(44) OZARKA COLLEGE FUND	\$ -
(45) UNIVERSITY OF ARKANSAS - PULASKI TECHNICAL COLLEGE FUND	\$ -
(46) SOUTHEAST ARKANSAS COLLEGE FUND	\$ -

(c) ALLOCATION B. Then after making the maximum annual allocations provided for in subsection (b) of this section, the Treasurer of State shall then make allocations from the remaining general

revenues available for distribution, as set forth in this subsection, to the funds and fund accounts listed below until there has been transferred a total of ninety million six hundred ninety-six thousand seventy-seven dollars (\$90,696,077) or so much thereof that may become available; provided, that the Treasurer of State shall make such monthly allocations in accordance with each fund or fund account's proportionate part of the total of all such allocations set forth in this subsection:

Name of Fund or Fund Account	Maximum Allocation
PUBLIC SCHOOL FUND	
(1) Division of Elementary and Secondary Education Public School Fund Account	\$ -
(2) State Library Public School Fund Account	\$ 282,096
(3) Division of Career and Technical Education Public School Fund Account	\$ 1,598,229
EDUCATION FUND	
(1) Division of Elementary and Secondary Education Fund Account	\$ 817,321
(2) Educational Facilities Partnership Fund Account	\$ -
(3) Division of Public School Academic Facilities and Transportation Fund Account	\$ 131,108
(4) Educational Television Fund Account	\$ 273,826
(5) School for the Blind Fund Account	\$ 362,406
(6) School for the Deaf Fund Account	\$ 526,636
(7) State Library Fund Account	\$ 180,840
(8) Division of Career and Technical Education Fund Account	\$ 500
(9) Rehabilitation Services Fund Account	\$ 597,620
Technical Institutes:	
(10) Northwest Technical Institute Fund Account	\$ 157,891
(11) Riverside Vocational Technical School Fund Account	\$ 117,932
DEPARTMENT OF HUMAN SERVICES FUND	
(1) Department of Human Services Administration Fund Account	\$ 1,189,552
(2) Children and Family Services Fund Account	\$ 6,260,843
(3) Child Care and Early Childhood Education Fund Account	\$ 105,746
(4) Youth Services Fund Account	\$ 2,568,398
(5) Developmental Disabilities Services Fund Account	\$ 3,350,039
(6) Medical Services Fund Account	\$ 116,894
(7) Department of Human Services Grants Fund Account	\$ -

Name of Fund or Fund Account	Maximum Allocation
(8) Behavioral Health Services Fund Account	\$ 4,947,032
(9) Provider Services and Quality Assurance Fund Account	\$ 269,382
(10) County Operations Fund Account	\$ 2,410,397

STATE GENERAL GOVERNMENT FUND

(1) Division of Arkansas Heritage Fund Account	\$ 375,876
(2) Department of Agriculture Fund Account	\$ 886,174
(3) Department of Labor and Licensing Fund Account	\$ 161,477
(4) Division of Higher Education Fund Account	\$ 579,272
(5) Higher Education Grants Fund Account	\$ 2,000,873
(6) Arkansas Economic Development Commission Fund Account	\$ 740,874
(7) Division of Correction Inmate Care and Custody Fund Account	\$ -
(8) Division of Community Correction Fund Account	\$ 4,812,607
(9) Department of the Military Fund Account	\$ 336,075
(10) Parks and Tourism Fund Account	\$ 1,039,417
(11) Division of Environmental Quality Fund Account	\$ 198,271
(12) Miscellaneous Agencies Fund Account	\$ 3,241,179

COUNTY AID FUND	\$ 1,071,431
COUNTY JAIL REIMBURSEMENT FUND	\$ 968,297
CRIME INFORMATION SYSTEM FUND	\$ 187,980
CHILD SUPPORT ENFORCEMENT FUND	\$ 649,203
PUBLIC HEALTH FUND	\$ 4,144,791
PERFORMANCE FUND	\$ -
MOTOR VEHICLE ACQUISITION REVOLVING FUND	\$ -
MUNICIPAL AID FUND	\$ 1,468,605
DIVISION OF ARKANSAS STATE POLICE FUND	\$ 3,282,440
DIVISION OF WORKFORCE SERVICES FUND-TANF	\$ 193,242
DIVISION OF WORKFORCE SERVICES FUND-ADULT EDUCATION	\$ 47,352
STATE SERVICES FOR THE BLIND FUND ACCOUNT	\$ 98,308
SKILLS DEVELOPMENT FUND	\$ 188,437

INSTITUTIONS OF HIGHER EDUCATION

(1) ARKANSAS STATE UNIVERSITY FUND	\$ 2,984,845
(2) ARKANSAS TECH UNIVERSITY FUND	\$ 1,669,368
(3) HENDERSON STATE UNIVERSITY FUND	\$ 951,548

Name of Fund or Fund Account	Maximum Allocation
(4) SOUTHERN ARKANSAS UNIVERSITY FUND	\$ 858,959
(5) UNIVERSITY OF ARKANSAS FUND	\$ 6,141,453
(6) UNIVERSITY OF ARKANSAS FUND-UA SYSTEM	\$ 173,974
(7) UNIVERSITY OF ARKANSAS FUND-ARCHEOLOGICAL SURVEY	\$ 118,464
(8) UNIVERSITY OF ARKANSAS FUND-DIVISION OF AGRICULTURE	\$ 3,290,007
(9) UNIVERSITY OF ARKANSAS FUND-CLINTON SCHOOL	\$ 116,845
(10) UNIVERSITY OF ARKANSAS FUND-CRIMINAL JUSTICE INSTITUTE	\$ 112,932
(11) SCHOOL FOR MATH, SCIENCES AND ARTS FUND	\$ 56,652
(12) UNIVERSITY OF ARKANSAS AT FORT SMITH FUND	\$ 1,017,360
(13) UNIVERSITY OF ARKANSAS AT LITTLE ROCK FUND	\$ 3,026,021
(14) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND	\$ 4,400,644
(15) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - CHILD ABUSE/RAPE/DOMESTIC VIOLENCE	\$ 37,412
(16) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - PEDIATRICS/PSYCHIATRIC RESEARCH	\$ 99,255
(17) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - CHILD SAFETY CENTER	\$ 36,678
(18) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - INDIGENT CARE	\$ 271,917
(19) UNIVERSITY OF ARKANSAS AT MONTICELLO FUND	\$ 798,672
(20) UNIVERSITY OF ARKANSAS AT PINE BLUFF FUND	\$ 1,310,605
(21) UNIVERSITY OF CENTRAL ARKANSAS FUND	\$ 2,762,659
(22) ARKANSAS NORTHEASTERN COLLEGE FUND	\$ 434,921
(23) ARKANSAS STATE UNIVERSITY - BEEBE FUND	\$ 587,542
(24) ARKANSAS STATE UNIVERSITY - MOUNTAIN HOME FUND	\$ 184,188
(25) ARKANSAS STATE UNIVERSITY - NEWPORT FUND	\$ 339,901

Name of Fund or Fund Account	Maximum Allocation
(26) COSSATOT COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND	\$ 173,802
(27) EAST ARKANSAS COMMUNITY COLLEGE FUND	\$ 412,215
(28) ARKANSAS STATE UNIVERSITY MID-SOUTH FUND	\$ 200,769
(29) ARKANSAS STATE UNIVERSITY MID-SOUTH FUND - ADTEC	\$ 77,700
(30) NATIONAL PARK COLLEGE FUND	\$ 441,084
(31) NORTH ARKANSAS COLLEGE FUND	\$ 390,354
(32) NORTHWEST ARKANSAS COMMUNITY COLLEGE FUND	\$ 608,639
(33) PHILLIPS COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND	\$ 449,435
(34) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT RICH MOUNTAIN FUND	\$ 178,071
(35) SAU - TECH FUND	\$ 278,546
(36) SAU - TECH FUND-ENVIRONMENTAL CONTROL CENTER	\$ 18,752
(37) SAU - TECH FUND-FIRE TRAINING ACADEMY	\$ 84,047
(38) SOUTH ARKANSAS COMMUNITY COLLEGE FUND	\$ 301,647
(39) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT BATESVILLE FUND	\$ 206,507
(40) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT HOPE-TEXARKANA FUND	\$ 249,455
(41) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT MORRILTON FUND	\$ 268,402
(42) BLACK RIVER TECHNICAL COLLEGE FUND	\$ 298,080
(43) ARKANSAS STATE UNIVERSITY THREE RIVERS FUND	\$ 173,544
(44) OZARKA COLLEGE FUND	\$ 152,439
(45) UNIVERSITY OF ARKANSAS - PULASKI TECHNICAL COLLEGE FUND	\$ 738,064
(46) SOUTHEAST ARKANSAS COLLEGE FUND	\$ 274,836

(d) ALLOCATION C. Then after making the maximum annual allocations provided for in subsection (c) of this section, the Treasurer of State shall then make allocations from the remaining general revenues available for distribution, as set forth in this subsection, to the funds and fund accounts listed below until there has been transferred a total of ninety million six hundred ninety-six thousand seventy-seven dollars (\$90,696,077) or so much thereof that may become available; provided,

that the Treasurer of State shall make such monthly allocations in accordance with each fund or fund account's proportionate part of the total of all such allocations set forth in this subsection:

Name of Fund or Fund Account	Maximum Allocation
PUBLIC SCHOOL FUND	
(1) Division of Elementary and Secondary Education Public School Fund Account	\$ -
(2) State Library Public School Fund Account	\$ 282,096
(3) Division of Career and Technical Education Public School Fund Account	\$ 1,598,229
EDUCATION FUND	
(1) Division of Elementary and Secondary Education Fund Account	\$ 817,321
(2) Educational Facilities Partnership Fund Account	\$ -
(3) Division of Public School Academic Facilities and Transportation Fund Account	\$ 131,108
(4) Educational Television Fund Account	\$ 273,826
(5) School for the Blind Fund Account	\$ 362,406
(6) School for the Deaf Fund Account	\$ 526,636
(7) State Library Fund Account	\$ 180,840
(8) Division of Career and Technical Education Fund Account	\$ 500
(9) Rehabilitation Services Fund Account	\$ 597,620
Technical Institutes:	
(10) Northwest Technical Institute Fund Account	\$ 157,891
(11) Riverside Vocational Technical School Fund Account	\$ 117,932
DEPARTMENT OF HUMAN SERVICES FUND	
(1) Department of Human Services Administration Fund Account	\$ 1,189,552
(2) Children and Family Services Fund Account	\$ 6,260,843
(3) Child Care and Early Childhood Education Fund Account	\$ 105,746
(4) Youth Services Fund Account	\$ 2,568,398
(5) Developmental Disabilities Services Fund Account	\$ 3,350,039
(6) Medical Services Fund Account	\$ 116,894
(7) Department of Human Services Grants Fund Account	\$ -
(8) Behavioral Health Services Fund Account	\$ 4,947,032
(9) Provider Services and Quality Assurance Fund Account	\$ 269,382

Name of Fund or Fund Account	Maximum Allocation
(10) County Operations Fund Account	\$ 2,410,397
STATE GENERAL GOVERNMENT FUND	
(1) Division of Arkansas Heritage Fund Account	\$ 375,876
(2) Department of Agriculture Fund Account	\$ 886,174
(3) Department of Labor and Licensing Fund Account	\$ 161,477
(4) Division of Higher Education Fund Account	\$ 579,272
(5) Higher Education Grants Fund Account	\$ 2,000,873
(6) Arkansas Economic Development Commission Fund Account	\$ 740,874
(7) Division of Correction Inmate Care and Custody Fund Account	\$ -
(8) Division of Community Correction Fund Account	\$ 4,812,607
(9) Department of the Military Fund Account	\$ 336,075
(10) Parks and Tourism Fund Account	\$ 1,039,417
(11) Division of Environmental Quality Fund Account	\$ 198,271
(12) Miscellaneous Agencies Fund Account	\$ 3,241,179
COUNTY AID FUND	\$ 1,071,431
COUNTY JAIL REIMBURSEMENT FUND	\$ 968,297
CRIME INFORMATION SYSTEM FUND	\$ 187,980
CHILD SUPPORT ENFORCEMENT FUND	\$ 649,203
PUBLIC HEALTH FUND	\$ 4,144,791
PERFORMANCE FUND	\$ -
MOTOR VEHICLE ACQUISITION REVOLVING FUND	\$ -
MUNICIPAL AID FUND	\$ 1,468,605
DIVISION OF ARKANSAS STATE POLICE FUND	\$ 3,282,440
DIVISION OF WORKFORCE SERVICES FUND-TANF	\$ 193,242
DIVISION OF WORKFORCE SERVICES FUND-ADULT EDUCATION	\$ 47,352
STATE SERVICES FOR THE BLIND FUND ACCOUNT	\$ 98,308
SKILLS DEVELOPMENT FUND	\$ 188,437
INSTITUTIONS OF HIGHER EDUCATION	
(1) ARKANSAS STATE UNIVERSITY FUND	\$ 2,984,845
(2) ARKANSAS TECH UNIVERSITY FUND	\$ 1,669,368
(3) HENDERSON STATE UNIVERSITY FUND	\$ 951,548
(4) SOUTHERN ARKANSAS UNIVERSITY FUND	\$ 858,959
(5) UNIVERSITY OF ARKANSAS FUND	\$ 6,141,453

Name of Fund or Fund Account	Maximum Allocation
(6) UNIVERSITY OF ARKANSAS FUND-UA SYSTEM	\$ 173,974
(7) UNIVERSITY OF ARKANSAS FUND-ARCHEOLOGICAL SURVEY	\$ 118,464
(8) UNIVERSITY OF ARKANSAS FUND-DIVISION OF AGRICULTURE	\$ 3,290,007
(9) UNIVERSITY OF ARKANSAS FUND-CLINTON SCHOOL	\$ 116,845
(10) UNIVERSITY OF ARKANSAS FUND-CRIMINAL JUSTICE INSTITUTE	\$ 112,932
(11) SCHOOL FOR MATH, SCIENCES AND ARTS FUND	\$ 56,652
(12) UNIVERSITY OF ARKANSAS AT FORT SMITH FUND	\$ 1,017,360
(13) UNIVERSITY OF ARKANSAS AT LITTLE ROCK FUND	\$ 3,026,021
(14) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND	\$ 4,400,644
(15) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - CHILD ABUSE/RAPE/DOMESTIC VIOLENCE	\$ 37,412
(16) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - PEDIATRICS/PSYCHIATRIC RESEARCH	\$ 99,255
(17) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - CHILD SAFETY CENTER	\$ 36,678
(18) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - INDIGENT CARE	\$ 271,917
(19) UNIVERSITY OF ARKANSAS AT MONTICELLO FUND	\$ 798,672
(20) UNIVERSITY OF ARKANSAS AT PINE BLUFF FUND	\$ 1,310,605
(21) UNIVERSITY OF CENTRAL ARKANSAS FUND	\$ 2,762,659
(22) ARKANSAS NORTHEASTERN COLLEGE FUND	\$ 434,921
(23) ARKANSAS STATE UNIVERSITY - BEEBE FUND	\$ 587,542
(24) ARKANSAS STATE UNIVERSITY - MOUNTAIN HOME FUND	\$ 184,188
(25) ARKANSAS STATE UNIVERSITY - NEWPORT FUND	\$ 339,901
(26) COSSATOT COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND	\$ 173,802

Name of Fund or Fund Account	Maximum Allocation
(27) EAST ARKANSAS COMMUNITY COLLEGE FUND	\$ 412,215
(28) ARKANSAS STATE UNIVERSITY MID-SOUTH FUND	\$ 200,769
(29) ARKANSAS STATE UNIVERSITY MID-SOUTH FUND - ADTEC	\$ 77,700
(30) NATIONAL PARK COLLEGE FUND	\$ 441,084
(31) NORTH ARKANSAS COLLEGE FUND	\$ 390,354
(32) NORTHWEST ARKANSAS COMMUNITY COLLEGE FUND	\$ 608,639
(33) PHILLIPS COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND	\$ 449,435
(34) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT RICH MOUNTAIN FUND	\$ 178,071
(35) SAU - TECH FUND	\$ 278,546
(36) SAU - TECH FUND-ENVIRONMENTAL CONTROL CENTER	\$ 18,752
(37) SAU - TECH FUND-FIRE TRAINING ACADEMY	\$ 84,047
(38) SOUTH ARKANSAS COMMUNITY COLLEGE FUND	\$ 301,647
(39) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT BATESVILLE FUND	\$ 206,507
(40) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT HOPE-TEXARKANA FUND	\$ 249,455
(41) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT MORRILTON FUND	\$ 268,402
(42) BLACK RIVER TECHNICAL COLLEGE FUND	\$ 298,080
(43) ARKANSAS STATE UNIVERSITY THREE RIVERS FUND	\$ 173,544
(44) OZARKA COLLEGE FUND	\$ 152,439
(45) UNIVERSITY OF ARKANSAS - PULASKI TECHNICAL COLLEGE FUND	\$ 738,064
(46) SOUTHEAST ARKANSAS COLLEGE FUND	\$ 274,836

(e)(1) ALLOCATION D. Then after making the maximum annual allocations provided for in subsection (d) of this section, the Treasurer of State shall then make allocations from the remaining general revenues available for distribution, as set forth in this subsection, to the funds and fund accounts listed below until there has been transferred a total of one hundred ninety million four hundred seventy-three thousand one hundred twelve dollars (\$190,473,112) or so much thereof that may become available; provided, that the Treasurer of State shall make such monthly allocations in accordance with each fund or fund

account's proportionate part of the total of all such allocations set forth in this subsection:

Name of Fund or Fund Account	Maximum Allocation
PUBLIC SCHOOL FUND	
(1) Division of Elementary and Secondary Education Public School Fund Account	\$ 9,717,486
(2) State Library Public School Fund Account	\$ 282,096
(3) Division of Career and Technical Education Public School Fund Account	\$ 1,598,229
EDUCATION FUND	
(1) Division of Elementary and Secondary Education Fund Account	\$ 817,321
(2) Educational Facilities Partnership Fund Account	\$ -
(3) Division of Public School Academic Facilities and Transportation Fund Account	\$ 131,108
(4) Educational Television Fund Account	\$ 273,826
(5) School for the Blind Fund Account	\$ 362,406
(6) School for the Deaf Fund Account	\$ 526,636
(7) State Library Fund Account	\$ 180,840
(8) Division of Career and Technical Education Fund Account	\$ 500
(9) Rehabilitation Services Fund Account	\$ 597,620
Technical Institutes:	
(10) Northwest Technical Institute Fund Account	\$ 157,891
(11) Riverside Vocational Technical School Fund Account	\$ 117,932
DEPARTMENT OF HUMAN SERVICES FUND	
(1) Department of Human Services Administration Fund Account	\$ 1,189,552
(2) Children and Family Services Fund Account	\$ 6,260,843
(3) Child Care and Early Childhood Education Fund Account	\$ 105,746
(4) Youth Services Fund Account	\$ 2,568,398
(5) Developmental Disabilities Services Fund Account	\$ 3,350,039
(6) Medical Services Fund Account	\$ 116,894
(7) Department of Human Services Grants Fund Account	\$ 65,382,122
(8) Behavioral Health Services Fund Account	\$ 4,947,032
(9) Provider Services and Quality Assurance Fund Account	\$ 269,382
(10) County Operations Fund Account	\$ 2,410,397

Name of Fund or Fund Account	Maximum Allocation
STATE GENERAL GOVERNMENT FUND	
(1) Division of Arkansas Heritage Fund Account	\$ 375,876
(2) Department of Agriculture Fund Account	\$ 886,174
(3) Department of Labor and Licensing Fund Account	\$ 161,477
(4) Division of Higher Education Fund Account	\$ 579,272
(5) Higher Education Grants Fund Account	\$ 2,000,873
(6) Arkansas Economic Development Commission Fund Account	\$ 740,874
(7) Division of Correction Inmate Care and Custody Fund Account	\$ 1,892,427
(8) Division of Community Correction Fund Account	\$ 4,812,607
(9) Department of the Military Fund Account	\$ 336,075
(10) Parks and Tourism Fund Account	\$ 1,039,417
(11) Division of Environmental Quality Fund Account	\$ 198,271
(12) Miscellaneous Agencies Fund Account	\$ 3,241,179
COUNTY AID FUND	\$ 1,071,431
COUNTY JAIL REIMBURSEMENT FUND	\$ 968,297
CRIME INFORMATION SYSTEM FUND	\$ 187,980
CHILD SUPPORT ENFORCEMENT FUND	\$ 649,203
PUBLIC HEALTH FUND	\$ 4,144,791
PERFORMANCE FUND	\$ 19,785,000
MOTOR VEHICLE ACQUISITION REVOLVING FUND	\$ 3,000,000
MUNICIPAL AID FUND	\$ 1,468,605
DIVISION OF ARKANSAS STATE POLICE FUND	\$ 3,282,440
DIVISION OF WORKFORCE SERVICES FUND-TANF	\$ 193,242
DIVISION OF WORKFORCE SERVICES FUND-ADULT EDUCATION	\$ 47,352
STATE SERVICES FOR THE BLIND FUND ACCOUNT	\$ 98,308
SKILLS DEVELOPMENT FUND	\$ 188,437
INSTITUTIONS OF HIGHER EDUCATION	
(1) ARKANSAS STATE UNIVERSITY FUND	\$ 2,984,845
(2) ARKANSAS TECH UNIVERSITY FUND	\$ 1,669,368
(3) HENDERSON STATE UNIVERSITY FUND	\$ 951,548
(4) SOUTHERN ARKANSAS UNIVERSITY FUND	\$ 858,959
(5) UNIVERSITY OF ARKANSAS FUND	\$ 6,141,453
(6) UNIVERSITY OF ARKANSAS FUND-UA SYSTEM	\$ 173,974

Name of Fund or Fund Account	Maximum Allocation
(7) UNIVERSITY OF ARKANSAS FUND-ARCHEOLOGICAL SURVEY	\$ 118,464
(8) UNIVERSITY OF ARKANSAS FUND-DIVISION OF AGRICULTURE	\$ 3,290,007
(9) UNIVERSITY OF ARKANSAS FUND-CLINTON SCHOOL	\$ 116,845
(10) UNIVERSITY OF ARKANSAS FUND-CRIMINAL JUSTICE INSTITUTE	\$ 112,932
(11) SCHOOL FOR MATH, SCIENCES AND ARTS FUND	\$ 56,652
(12) UNIVERSITY OF ARKANSAS AT FORT SMITH FUND	\$ 1,017,360
(13) UNIVERSITY OF ARKANSAS AT LITTLE ROCK FUND	\$ 3,026,021
(14) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND	\$ 4,400,644
(15) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - CHILD ABUSE/RAPE/DOMESTIC VIOLENCE	\$ 37,412
(16) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - PEDIATRICS/PSYCHIATRIC RESEARCH	\$ 99,255
(17) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - CHILD SAFETY CENTER	\$ 36,678
(18) UNIVERSITY OF ARKANSAS MEDICAL CENTER FUND - INDIGENT CARE	\$ 271,917
(19) UNIVERSITY OF ARKANSAS AT MONTICELLO FUND	\$ 798,672
(20) UNIVERSITY OF ARKANSAS AT PINE BLUFF FUND	\$ 1,310,605
(21) UNIVERSITY OF CENTRAL ARKANSAS FUND	\$ 2,762,659
(22) ARKANSAS NORTHEASTERN COLLEGE FUND	\$ 434,921
(23) ARKANSAS STATE UNIVERSITY - BEEBE FUND	\$ 587,542
(24) ARKANSAS STATE UNIVERSITY - MOUNTAIN HOME FUND	\$ 184,188
(25) ARKANSAS STATE UNIVERSITY - NEWPORT FUND	\$ 339,901
(26) COSSATOT COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND	\$ 173,802
(27) EAST ARKANSAS COMMUNITY COLLEGE FUND	\$ 412,215

Name of Fund or Fund Account	Maximum Allocation
(28) ARKANSAS STATE UNIVERSITY MID-SOUTH FUND	\$ 200,769
(29) ARKANSAS STATE UNIVERSITY MID-SOUTH FUND - ADTEC	\$ 77,700
(30) NATIONAL PARK COLLEGE FUND	\$ 441,084
(31) NORTH ARKANSAS COLLEGE FUND	\$ 390,354
(32) NORTHWEST ARKANSAS COMMUNITY COLLEGE FUND	\$ 608,639
(33) PHILLIPS COMMUNITY COLLEGE OF THE UNIVERSITY OF ARKANSAS FUND	\$ 449,435
(34) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT RICH MOUNTAIN FUND	\$ 178,071
(35) SAU - TECH FUND	\$ 278,546
(36) SAU - TECH FUND-ENVIRONMENTAL CONTROL CENTER	\$ 18,752
(37) SAU - TECH FUND-FIRE TRAINING ACADEMY	\$ 84,047
(38) SOUTH ARKANSAS COMMUNITY COLLEGE FUND	\$ 301,647
(39) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT BATESVILLE FUND	\$ 206,507
(40) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT HOPE-TEXARKANA FUND	\$ 249,455
(41) UNIVERSITY OF ARKANSAS COMMUNITY COLLEGE AT MORRILTON FUND	\$ 268,402
(42) BLACK RIVER TECHNICAL COLLEGE FUND	\$ 298,080
(43) ARKANSAS STATE UNIVERSITY THREE RIVERS FUND	\$ 173,544
(44) OZARKA COLLEGE FUND	\$ 152,439
(45) UNIVERSITY OF ARKANSAS - PULASKI TECHNICAL COLLEGE FUND	\$ 738,064
(46) SOUTHEAST ARKANSAS COLLEGE FUND	\$ 274,836

(2)(A) Five million nine hundred nine thousand dollars (\$5,909,000) shall be included and added to the amount distributed in subdivision (e)(1) of this section and distributed by the Treasurer of State in monthly amounts to the Arkansas Medicaid Program Trust Fund under § 19-5-985.

(B) The amount allocated in subdivision (e)(2)(A) of this section or so much thereof as is available shall be distributed by the Treasurer of State in monthly amounts with each allocation's proportion of the total of subdivisions (e)(1), (e)(2)(A), and (e)(3) of this section to supplement the Arkansas Medicaid Program Trust Fund.

(3) Fifteen million eight hundred seventy-seven thousand four hundred seventy-six dollars (\$15,877,476), or so much thereof as is avail-

able shall be included and added to the amount distributed in subdivision (e)(1) of this section and shall be distributed by the Treasurer of State in monthly amounts with each allocation's proportion of the total of subdivisions (e)(1) and (e)(2)(A) of this section and this subdivision (e)(3) to supplement the Restricted Reserve Fund.

History. Acts 1973, No. 750, § 11; 1974 (1st Ex. Sess.), No. 90, § 1; 1975, No. 868, § 15; 1977, No. 955, § 1; 1977 (1st Ex. Sess.), No. 7, § 1; 1979, No. 1115, § 1; 1981, No. 937, § 1; 1983, No. 801, § 12; 1983 (1st Ex. Sess.), No. 119, § 1; 1985, No. 888, § 25; A.S.A. 1947, § 13-515; Acts 1987, No. 928, § 15; 1989, No. 629, § 15; 1991, No. 1135, § 14; 1993, No. 1073, § 32; 1995, No. 1163, § 32; 1997, No. 1248, § 29; 1999, No. 1463, § 31; 2001, No. 1646, § 30; 2003 (1st Ex. Sess.), No. 55, § 40; 2005, No. 2282, § 17; 2005, No. 2316, § 17; 2007, No. 1032, § 35; 2007, No. 1201, § 35; 2009, No. 1440, § 8; 2009, No. 1441, § 8; 2010, No. 262, § 13; 2010, No. 296, § 13; 2011, No. 1095, § 17; 2011, No. 1115, § 17; 2012, No. 271, § 7; 2012, No. 287, § 7; 2013, No. 1516, § 4; 2013, No. 1517, § 4; 2014, No. 290, § 10; 2014, No. 299, § 10; 2014 (2nd Ex. Sess.), No. 1, § 2; 2014 (2nd Ex. Sess.), No. 5, § 2; 2015, No. 1144, § 10; 2015, No. 1145, § 10;

2016, No. 242, § 4; 2016, No. 270, § 4; 2017, No. 141, § 1; 2017, No. 1083, § 23; 2017, No. 1127, § 23; 2018, No. 259, § 4; 2018, No. 260, § 4; 2019, No. 998, § 9; 2019, No. 1024, § 9; 2020, No. 186, § 5; 2020, No. 187, § 5.

A.C.R.C. Notes. Identical Acts 2020, Nos. 186 and 187, § 1, provided: "The purpose of this act is to amend the Revenue Stabilization Law and to create funds, to repeal funds, and to make transfers to and from funds and fund accounts."

Identical Acts 2020, Nos. 186 and 187, § 6, provided: "DUPLICATE ACTS. If HB1096 and SB83 of the 2020 Fiscal Session of the 92nd General Assembly are both enacted and adopted by the 92nd General Assembly in identical form, then the last Act passed or latest expression shall supersede the other."

Amendments. The 2020 amendment by identical acts Nos. 186 and 187 rewrote the section.

SUBCHAPTER 11 — TRUST FUNDS CONTINUED

SECTION.

19-5-1154. Rural Broadband I.D. Expenses Trust Fund — Cre-

ation — Purpose — Definitions.

Effective Dates. Acts 2020, No. 139, § 60; July 1, 2020. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2020 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the legislative session, the delay in the effective date of this Act beyond July 1, 2020 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2020."

19-5-1154. Rural Broadband I.D. Expenses Trust Fund — Creation — Purpose — Definitions.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State, a trust fund to be known as the “Rural Broadband I.D. Expenses Trust Fund”.

(b) The Rural Broadband I.D. Expenses Trust Fund shall be used for one-time grants for the defrayment of expenses for broadband due-diligence business studies incurred by prospective federal broadband program applicants, in anticipation of and before application for funding from:

(1) The Federal Communications Commission’s Rural Digital Opportunity Fund program;

(2) The United States Department of Agriculture’s Rural eConnectivity Pilot Program, otherwise known as the “ReConnect Program”;

(3) The United States Department of Agriculture’s “Farm Bill”; or

(4) Other federal grants or loans for broadband development programs.

(c) The Rural Broadband I.D. Expenses Trust Fund shall consist of funds authorized or provided by law.

(d) Broadband due-diligence business studies shall be conducted and concluded within one hundred eighty (180) days of the receipt of the Rural Broadband I.D. Expenses Trust Fund grant.

(e) Upon receipt of a Rural Broadband I.D. Expenses Trust Fund grant, the local entity shall file a surety bond for the benefit of the State of Arkansas with the Treasurer of State in the amount of the Rural Broadband I.D. Expenses Trust Fund grant for assurance that the Rural Broadband I.D. Expenses Trust Fund grant is utilized for broadband due-diligence business studies.

(f) As used in this section:

(1)(A) “Broadband due-diligence business studies” means analytical research designed to acquire the data necessary to support applications for federal grants or loans for broadband development programs.

(B) “Broadband due-diligence business studies” includes without limitation:

(i) Full feasibility determinations, including economic business plans;

(ii) Twenty-year financial break-even analysis;

(iii) Competitive broadband analysis;

(iv) Demographic analysis, with comparison to other projects;

(v) The ordering of construction plans to maximize return; and

(vi) Analysis of federal funding opportunities; and

(2) “Local entity” means a county, including without limitation an unincorporated community within a county, a city of the first class, a city of the second class, and an incorporated town.

History. Acts 2020, No. 139, § 27.

A.C.R.C. Notes. The United States De-

partment of Agriculture’s “Farm Bill”, referred to in this section, is an apparent

reference to the Agriculture Improvement Act of 2018, Pub. L. No. 115-334, otherwise known as the "2018 Farm Bill", as implemented by the United States Department of Agriculture.

The definitions in subsection (f) of this section also are applicable to Acts 2020, No. 139, §§ 26, 28-34, which are noted under this section.

Acts 2020, No. 139, § 26, provided: **"LEGISLATIVE FINDINGS AND INTENT.**

"(a) The General Assembly finds that:

"(1) Generally, local entities do not budget for or have funds available for broadband due-diligence business studies in connection with making application for federal grants or loans for broadband development programs;

"(2) In order to spur further development of broadband in rural Arkansas, it is necessary for local entities to conduct due-diligence business studies before application for federal grants or loans for broadband development programs;

"(3) Expenses associated with broadband due-diligence business studies can be burdensome to rural Arkansas communities, and it is in the best interest of all Arkansans to make this investment;

"(4) Under current Arkansas law, only certain eligible telecommunications carriers have benefitted from the Arkansas High Cost Fund, which underwrites broadband deployment; and

"(5) It is necessary to provide funds to local entities to further wide-spread broadband deployment, particularly in unserved and underserved rural Arkansas, and to determine the feasibility of broadband deployment for local entities that currently do not have federally-defined broadband services and where these broadband due-diligence business studies have not been conducted before.

"(b) It is the intent of the General Assembly to provide funds to local entities to defray expenses for broadband due-diligence business studies in connection with preparation for federal grant and loan applications for broadband development programs administered by the Federal Communications Commission, the United States Department of Agriculture, or other federal agency to spur federally-defined broadband development in rural Arkansas.

"The provisions of this section shall be in effect only from July 1, 2020 through June 30, 2021."

Acts 2020, No. 139, § 28, provided: **"MANAGEMENT OF RURAL BROADBAND I.D. EXPENSES TRUST FUND GRANT APPLICATION PROCESS.**

"(a) The Institute for Digital Health and Innovation of the University of Arkansas for Medical Sciences shall manage the Rural Broadband I.D. Expenses Trust Fund grant application process for local entities.

"(b) The Institute for Digital Health and Innovation shall:

"(1) Determine Rural Broadband I.D. Expenses Trust Fund grantees;

"(2) Promulgate rules necessary to implement this act;

"(3)(A) Determine the amount of the Rural Broadband I.D. Expenses Trust Fund grant funds disbursed to an applicant.

"(B) An applicant may be a prospective and qualified applicant for a federal grant or loan for a broadband development program under the federal regulations promulgated by the Federal Communications Commission, the United States Department of Agriculture, or other federal agency;

"(4) Make the determination if the grants shall be awarded; and

"(5) Inform the Treasurer of State when a determination is made for the awarding of Rural Broadband I.D. Expenses Trust Fund grants.

"(c) The Rural Broadband I.D. Expenses Trust Fund grants awarded under this act shall:

"(1) Not exceed seventy-five thousand dollars (\$75,000) per grant;

"(2) Be limited to thirty (30) total one-time grant awards; and

"(3) Be made to a federally deposit-insured financial institution designated by the local entity that is a Rural Broadband I.D. Expenses Trust Fund grantee.

"(d)(1) A local entity that is a Rural Broadband I.D. Expenses Trust Fund grantee shall:

"(A) Manage the funds it receives for conducting the broadband due-diligence business studies; and

"(B) File with the Institute for Digital Health and Innovation of the University of Arkansas for Medical Sciences an audited accounting of disbursed funds for

conducting the broadband due-diligence business studies, including information concerning the organizations conducting the broadband due-diligence business studies, the amount paid to those organizations, and the due date of the broadband due-diligence business studies.

“(2) The accounting described in subdivision (d)(1)(B) of this section shall be filed no later than:

“(A)(i) Four (4) months from the date of receipt of the funds.

“(ii) A local entity that files an accounting filed under subdivision (d)(2)(A)(i) of this section shall file an additional accounting at the conclusion of the broadband due-diligence business study; or

“(B) Nine (9) months after receipt of the funds.

“(3) Any funds not spent on the broadband due-diligence business study shall be paid back to the Treasurer of State within nine (9) months after receipt of the disbursement.

“The provisions of this section shall be in effect only from July 1, 2020 through June 30, 2021.”

Acts 2020, No. 139, § 29, provided: “LEGISLATIVE OVERSIGHT.

“(a) The General Assembly shall maintain oversight of the Rural Broadband I.D. Expenses Trust Fund grant program under this act by requiring prior approval of the Legislative Council or Joint Budget Committee as provided by law before Rural Broadband I.D. Expenses Trust Fund grants are awarded.

“(b) The Director of the Institute for Digital Health and Innovation of the University of Arkansas for Medical Sciences and the Treasurer of State, or their designees, shall:

“(1) Report to the General Assembly before Rural Broadband I.D. Expenses Trust Fund grants are awarded;

“(2)(A) File an semiannual report detailing:

“(i) The balance of the Rural Broadband I.D. Expenses Trust Fund as of the reporting date;

“(ii) A list of the administrative overhead costs paid for from the Rural Broadband I.D. Expenses Trust Fund; and

“(iii) A detailed description of the grant applications received and the amount of the Rural Broadband I.D. Expenses Trust Fund grant funds that were disbursed.

“(B) The semiannual reports required under subdivision (b)(2)(A) of this section shall be submitted by January 1 and July 1 of each year to the:

“(i) Governor;

“(ii) Legislative Council or, if the General Assembly is in session, the Joint Budget Committee; and

“(iii) Committee on Advanced Communications and Information Technology.

“The provisions of this section shall be in effect only from July 1, 2020 through June 30, 2021.”

Acts 2020, No. 139, § 30, provided: “INVESTMENT OF FUNDS.

“(a)(1) The Treasurer of State shall invest the moneys available in the Rural Broadband I.D. Expenses Trust Fund.

“(2) The investment of funds under this section is exempt from § 19-3-518(a)(2)(B)(i)(b) and (c).

“(b) Moneys in the Rural Broadband I.D. Expenses Trust Fund may be invested in any instrument that is:

“(1) Listed in § 19-3-518(b)(1)(B); and

“(2) Approved by the guidelines established by the State Treasury investment policy approved by the State Board of Finance.

“(c) Assuming reauthorization of the Rural Broadband I.D. Expenses Trust Fund by the General Assembly, moneys remaining in the Rural Broadband I.D. Expenses Trust Fund at the end of each fiscal year shall carry forward and be made available for the purposes stated in this section in the next fiscal year.

“The provisions of this section shall be in effect only from July 1, 2020 through June 30, 2021.”

Acts 2020, No. 139, § 31, provided: “ADDITIONAL REPORTING REQUIREMENT BY LOCAL ENTITY AS RURAL BROADBAND I.D. EXPENSES TRUST FUND GRANTEE. A local entity that is a Rural Broadband I.D. Expenses Trust Fund grantee under this act shall:

“(1) Report to the Institute for Digital Health and Innovation of the University of Arkansas for Medical Sciences semiannually about the status of the local entity's broadband due-diligence business study; and

“(2) Cite reports and analyses finalized as a consequence of the Rural Broadband I.D. Expenses Trust Fund grant award.

“The provisions of this section shall be in effect only from July 1, 2020 through June 30, 2021.”

Acts 2020, No. 139, § 32, provided: “ADDITIONAL FUNDING AVAILABLE.

“(a) If an application by a local entity for a federal grant or loan for a broadband development program is made and successfully awarded by the United States Government, then the local entity as grantee shall report and disclose the award received from the federal government within thirty (30) days of the award notification to the:

“(1) Institute for Digital Health and Innovation of the University of Arkansas for Medical Sciences;

“(2) Governor;

“(3) Legislative Council or, if the General Assembly is in session, the Joint Budget Committee; and

“(4) Joint Committee on Advanced Communications and Information Technology.

“(b)(1) If an award is made by the United States Government, additional funds shall be disbursed to the local entity as a grantee or awardee, as designated by the grantee, to initiate the broadband project.

“(2) The additional awards shall be in the amount of two hundred thousand dollars (\$200,000).

“(3) It is anticipated that these funds shall defray expenses related to conclusion of the federal grant or loan, including without limitation the expenses of obtaining a letter of credit, a bankruptcy opinion, or eligible telecommunications carrier application expenses, as required by the federal grant or loan awarded.

“The provisions of this section shall be in effect only from July 1, 2020 through June 30, 2021.”

Acts 2020, No. 139, § 33, provided: “REPORTING RELATED TO COMMENCEMENT OF BROADBAND DEVELOPMENT PROGRAM FUNDED BY FEDERAL GRANT OR LOAN. A local entity that has been awarded a federal grant or loan for a broadband development program shall report the status of the broadband development program to the Institute for Digital Health and Innovation of the University of Arkansas for Medical Sciences within nine (9) months of the award of the federal grant or loan.

“The provisions of this section shall be in effect only from July 1, 2020 through June 30, 2021.”

Acts 2020, No. 139, § 34, provided: “SUBMISSION OF MAPPING INFORMATION TO ARKANSAS GEOGRAPHIC INFORMATION SYSTEMS OFFICE REQUIRED.

“(a) A local entity shall coordinate with the Arkansas Geographic Information Systems Office to provide mapping information to the Arkansas Spatial Data Infrastructure (ASDI) for preparation of legal descriptions and digital mapping for the relevant incorporated or unincorporated areas.

“(b) A local entity that has been awarded a state or federal grant or loan shall provide information concerning broadband mapping to the Arkansas Geographic Information Systems Office in compliance with the Arkansas Geographic Information Systems Office Policy Statement PS-01, Arkansas Spatial Data Infrastructure (ASDI) Data Loading and Retirement Procedures.

“The provisions of this section shall be in effect only from July 1, 2020 through June 30, 2021.”

SUBCHAPTER 12 — MISCELLANEOUS FUNDS CONTINUED

SECTION.

19-5-1267. COVID-19 Rainy Day Fund.

SECTION.

19-5-1268. Skills Development Fund.

Effective Dates. Identical Acts 2020 (1st Ex. Sess.), Nos. 1 and 2, § 3: Mar. 28, 2020. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the creation of the Covid-19 Rainy Day Fund

and a transfer of funds to the COVID-19 Rainy Day Fund is necessary to continue essential services. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and

safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Identical Acts 2020, Nos. 186 and 187, § 7: July 1, 2020.

Identical Acts 2020, Nos. 186 and 187, § 8: July 1, 2020. Emergency clause provided: “It is found and determined by the

General Assembly of the State of Arkansas that changes in the state’s fiscal laws must take effect at the beginning of the fiscal year; and that it is necessary for this act to become effective on July 1, 2020, to avoid a lapse in critical and essential services that state government provides to the citizens of this state at the beginning of the next fiscal year. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2020.”

19-5-1267. COVID-19 Rainy Day Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous fund to be known as the “COVID-19 Rainy Day Fund”.

(b) The COVID-19 Rainy Day Fund shall consist of:

(1) Funds transferred from the General Revenue Allotment Reserve Fund to the COVID-19 Rainy Day Fund;

(2) Any revenues provided by law; and

(3) Any fund or fund account transfers provided for by law.

(c) The Chief Fiscal Officer of the State shall use the COVID-19 Rainy Day Fund for transfers to provide funding for one (1) or more appropriations authorized by the General Assembly and to offset general revenue reductions, funding needs, and unanticipated needs created by the COVID-19 crisis.

(d)(1) Notwithstanding any other provisions of law, the release of any funds from the COVID-19 Rainy Day Fund shall require prior approval, as defined in this subsection, of the:

(A) Speaker of the House of Representatives or his or her designee;

(B) Majority party leader of the House of Representatives or his or her designee;

(C) Minority party leader of the House of Representatives or his or her designee;

(D) President Pro Tempore of the Senate or his or her designee;

(E) Majority party leader of the Senate or his or her designee; and

(F) Minority party leader of the Senate or his or her designee.

(2)(A) The Secretary of the Department of Finance and Administration shall notify the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and all other members of the General Assembly of a request for the release of funds from the COVID-19 Rainy Day Fund.

(B)(i) The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall communicate the request to the respective majority party leader and respective minority party leader.

(ii) If a majority party leader or a minority party leader is unavailable or recuses from the vote, the Speaker of the House of Representatives and the President Pro Tempore of the Senate shall contact the non-responding majority party leader's designee or non-responding minority party leader's designee.

(3)(A) As used in this section "prior approval" means:

(i) At least two (2) members listed in subdivision (d)(1) of this section from the House of Representatives and two (2) members listed in subdivision (d)(1) of this section from the Senate approve the release of funds from the COVID-19 Rainy Day Fund; and

(ii) The written or electronic approval by the two (2) members listed in subdivision (d)(1) of this section from the House of Representatives and by the two (2) members listed in subdivision (d)(1) of this section from the Senate occurs within two (2) hours after the members received written or electronic notification of the request by the Speaker of the House of Representatives or the President Pro Tempore of the Senate.

(B) In the event the majority party leader or the minority party leader is not available within two (2) hours after the notification has been given or has recused, the Speaker of the House of Representatives or the President Pro Tempore of the Senate shall contact the non-responding majority party leader's designee or non-responding minority party leader's designee and the designee shall either be immediately available or is deemed to vote for approval of the release of funds from the COVID-19 Rainy Day Fund.

(4)(A) The action taken under this subsection shall be reported to the members of the General Assembly.

(B) The report shall include:

(i) Remaining balances in the COVID-19 Rainy Day Fund;

(ii) Total amount released to date; and

(iii) The amount of each prior release and the purpose of the release.

(e) Determining the general revenue funding for a state agency each fiscal year is the prerogative of the General Assembly. This is usually accomplished by delineating such maximums for a state agency with general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law, § 19-5-101 et seq. Further, the General Assembly has determined that the various state agencies may operate more efficiently if some flexibility is provided authorizing broad powers under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval as set out in subsection (d) herein, by this section. The requirement of approval as set out in subsection (d) of this section is not a severable part of this section. If the requirement of approval as set out in subsection (d) of this section is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

History. Acts 2020 (1st Ex. Sess.), No. 1, § 1; 2020 (1st Ex. Sess.), No. 2, § 1.

A.C.R.C. Notes. Identical Acts 2020 (1st Ex. Sess.), Nos. 1 and 2, § 2, provided: “FUND TRANSFER TO THE COVID-19 RAINY DAY FUND.”

“(a) Immediately upon the effective date of this act, the Chief Fiscal Officer of the State shall transfer on his or her books and those of the State Treasurer and the Auditor of the State the sum of one hundred seventy three million six hundred ten thousand six hundred and thirty-two dollars (\$173,610,632) from the General Revenue Allotment Reserve Fund to the COVID-19 Rainy Day Fund to provide

funding for one (1) or more appropriations authorized by the General Assembly to offset general revenue reductions due to the reduction of the Official General Revenue Forecast and to address needs created by the COVID-19 crises, to be released as set out in the COVID-19 Rainy Day Fund.

“(b) On June 30, 2020 the Chief Fiscal Officer of the State shall transfer on his or her books and those of the State Treasurer and the Auditor of the State any funds remaining in the COVID-19 Rainy Day Fund to the General Revenue Allotment Reserve Fund.”

19-5-1268. Skills Development Fund.

(a) There is created on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a miscellaneous fund to be known as the “Skills Development Fund”.

(b) The fund shall consist of:

(1) General revenues authorized by law;

(2) Moneys obtained from private grants or other sources that are designated to be credited to the fund; and

(3) Any other revenues authorized by law.

(c) The fund shall be used by the Office of Skills Development as provided in § 25-30-109.

History. Acts 2020, No. 186, § 3; 2020, No. 187, § 3.

A.C.R.C. Notes. Identical Acts 2020, Nos. 186 and 187, § 1, provided: “The purpose of this act is to amend the Revenue Stabilization Law and to create funds, to repeal funds, and to make transfers to and from funds and fund accounts.”

Identical Acts 2020, Nos. 186 and 187, § 6, provided: “DUPLICATE ACTS. If HB1096 and SB83 of the 2020 Fiscal Session of the 92nd General Assembly are both enacted and adopted by the 92nd General Assembly in identical form, then the last Act passed or latest expression shall supersede the other.”

CHAPTER 6

REVENUE CLASSIFICATION LAW

SUBCHAPTER.

8. SPECIAL REVENUE FUNDS CONTINUED.

SUBCHAPTER 8 — SPECIAL REVENUE FUNDS CONTINUED

SECTION.

19-6-830. [Repealed.]

Effective Dates. Identical Acts 2020, Nos. 186 and 187, § 7: July 1, 2020.

Identical Acts 2020, Nos. 186 and 187, § 8: July 1, 2020. Emergency clause pro-

vided: “It is found and determined by the General Assembly of the State of Arkansas that changes in the state’s fiscal laws must take effect at the beginning of the fiscal year; and that it is necessary for this act to become effective on July 1, 2020, to avoid a lapse in critical and essential

services that state government provides to the citizens of this state at the beginning of the next fiscal year. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2020.”

19-6-830. [Repealed.]

Publisher’s Notes. This section, concerning the Skills Development Fund, was repealed by identical Acts 2020, Nos. 186

and 187, § 2, effective July 1, 2020. The section was derived from Acts 2015, No. 892, § 4. For current law, see § 19-5-1268.

CHAPTER 10
CLAIMS AGAINST THE STATE

SUBCHAPTER 3 — EFFECT OF INSURANCE COVERAGE

19-10-305. Immunity of state officers and employees — Status as employee.

CASE NOTES

ANALYSIS

Excessive Force.
Malicious Conduct.

Excessive Force.

In an excessive-force case, the trial court erred in denying summary judgment with respect to the son’s tort claims against the police chief, as the son did not specifically allege facts supporting the claims as to the police chief, but there was no error in the trial court’s denial of summary judgment regarding the son’s claims against the officer, as well as the father’s claims against the officer and the police chief, because material issues of fact existed regarding the reasonableness of their conduct and therefore they were not entitled to summary judgment on the ba-

sis of qualified immunity. *Faughn v. Kennedy*, 2019 Ark. App. 570, 590 S.W.3d 188 (2019).

Malicious Conduct.

In a case in which plaintiff was tased, without warning, and arrested, the officer was entitled to immunity as plaintiff failed to produce evidence sufficient to create a triable issue of fact regarding malice; plaintiff had not shown a conscious violation of the law as the officer was authorized to use some force to arrest plaintiff under Arkansas law; and the officer’s use of force did not violate clearly established principles of law of which a reasonable person would have knowledge. *Boudoin v. Harsson*, 962 F.3d 1034 (8th Cir. 2020).

CHAPTER 11
PURCHASING AND CONTRACTS

SUBCHAPTER.

2. ARKANSAS PROCUREMENT LAW.

SUBCHAPTER 2 — ARKANSAS PROCUREMENT LAW

SECTION.

19-11-220. Agency procurement officials.

19-11-269. Review of information technology plans.

Effective Dates. Acts 2020, No. 129, § 11: July 1, 2020. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2020 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the legislative session, the delay in the effective date of this Act beyond July 1, 2020 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2020."

19-11-220. Agency procurement officials.

(a) In addition to any state agency authorized by rule to have an agency procurement official, each of the following state agencies may elect to have such an official for commodities, technical and general services, and professional and consultant services, which are not within the exclusive jurisdiction of the State Procurement Director and which are not under state contract:

- (1) Arkansas Department of Transportation;
- (2) Arkansas State University-Beebe;
- (3) Arkansas State University;
- (4) Arkansas State University system;
- (5) Arkansas Tech University;
- (6) Henderson State University;
- (7) Southern Arkansas University;
- (8) University of Arkansas at Fayetteville;
- (9) University of Arkansas Fund entities;
- (10) University of Arkansas at Little Rock;
- (11) University of Arkansas at Monticello;
- (12) University of Arkansas at Pine Bluff;
- (13) University of Arkansas for Medical Sciences;
- (14) University of Central Arkansas;
- (15) Arkansas State University-Mountain Home;
- (16) Arkansas State University-Newport;
- (17) Black River Technical College;
- (18) Cossatot Community College of the University of Arkansas;
- (19) East Arkansas Community College;
- (20) National Park College;
- (21) Arkansas Northeastern College;

- (22) Arkansas State University Mid-South;
- (23) North Arkansas College;
- (24) Northwest Arkansas Community College;
- (25) Arkansas State University Three Rivers;
- (26) Ozarka College;
- (27) Phillips Community College of the University of Arkansas;
- (28) University of Arkansas Community College at Morrilton;
- (29) University of Arkansas — Pulaski Technical College;
- (30) University of Arkansas Community College at Rich Mountain;
- (31) SAU-Tech;
- (32) Southeast Arkansas College;
- (33) South Arkansas Community College;
- (34) University of Arkansas Community College at Batesville;
- (35) University of Arkansas Community College at Hope-Texarkana;
- (36) University of Arkansas at Fort Smith; and
- (37) Division of Higher Education.

(b)(1) Each official shall manage and establish internal procedures for the procurement office of the state agency authorized to have the official to ensure adequate administrative procedures and controls pursuant to law and the procurement rules.

(2)(A) Approval by the Office of State Procurement of contracts administered by the official shall not be required, unless a determination has been made by the Secretary of the Department of Transformation and Shared Services that administrative procedures and controls are not adequate.

(B)(i) Such a determination shall result in notification by the secretary of the specific deficiencies and the reasons therefor.

(ii) After the notification, approval of contracts by the Office of State Procurement shall be required until the secretary determines that the deficiencies have been corrected.

(c) Except for the promulgation by the director of rules authorized in this subchapter and the letting of state contracts, all rights and practices granted herein to the Office of State Procurement and the director are granted to an official in the administration of contracts for the state agency authorized to have the official.

(d) Nothing in this section is intended to prohibit a state agency from utilizing the Office of State Procurement in the same manner as state agencies not authorized to have officials.

History. Acts 1979, No. 482, § 19; 1981, No. 600, §§ 7, 8; A.S.A. 1947, § 14-247; Acts 1991, No. 1018, § 3; 2001, No. 1237, § 12; 2005, No. 1680, § 2; 2009, No. 605, § 21; 2009, No. 606, § 21; 2013, No. 1393, § 8; 2015, No. 218, § 22; 2016, No. 140, § 12; 2016, No. 141, § 12; 2017, No. 178, § 8; 2017, No. 179, § 10; 2017, No.

707, § 59; 2019, No. 204, § 4; 2019, No. 315, §§ 1759-1761; 2019, No. 910, §§ 6108, 6109; 2020, No. 129, § 7.

Amendments. The 2020 amendment substituted “Arkansas State University Three Rivers” for “College of the Ouachitas” in (a)(25).

19-11-269. Review of information technology plans.

The Office of State Procurement shall ensure that all required information has been submitted to the Office of Intergovernmental Services for review of proper planning and technical requirements before the execution of:

- (1) A contract issued under this subchapter that procures information technology products or services with a total projected contract amount, including any amendments to or possible extensions of the contract, of at least one hundred thousand dollars (\$100,000); or
- (2) A purchase of information technology products or services made under a cooperative purchase agreement under § 19-11-249.

History. Acts 2015, No. 557, § 6. ing set out to correct a reference to a state
Publisher’s Notes. This section is be- entity.

TITLE 20
PUBLIC HEALTH AND WELFARE

SUBTITLE 2. HEALTH AND SAFETY

CHAPTER.
7. STATE BOARD OF HEALTH — DEPARTMENT OF HEALTH.

SUBTITLE 5. SOCIAL SERVICES

CHAPTER.
77. MEDICAL ASSISTANCE.

SUBTITLE 2. HEALTH AND SAFETY

CHAPTER 7
STATE BOARD OF HEALTH — DEPARTMENT OF HEALTH

SUBCHAPTER.
1. GENERAL PROVISIONS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION. gious organizations —
20-7-141. Prevention of diseases — Reli- Definitions.

Effective Dates. Acts 2021, No. 94, § 4: Became law without Governor’s signature, Feb. 11, 2021. Emergency clause provided: “It is found and determined by the General Assembly of the State of Ar- kansas that the coronavirus 2019 (COVID-19) pandemic and response of the executive branch to the coronavirus 2019 (COVID-19) pandemic have highlighted the need to address the constitutional

rights of the citizens of Arkansas, particularly the right to the free exercise of religion; that this act prohibits government interference with the free exercise of religion during a disaster emergency such as the current pandemic; and that this act is immediately necessary to ensure the protection of the constitutional rights of Arkansans to freely exercise religion. Therefore, an emergency is declared to exist, and this act being immediately necessary

for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-7-136. Statewide fluoridation program — Definition.

CASE NOTES

Applicability.

There was no error in the State Board of Health's finding that this section's requirement of a fluoridation program applied to a regional public water authority as the plain and unambiguous language in the definition of "water system" con-

tains the term "including without limitation" and therefore includes wholesale systems that serve 5,000 or more persons. *Ozark Mt. Reg'l Pub. Water Auth. v. Ark. AG*, 2020 Ark. App. 180, 598 S.W.3d 864 (2020).

20-7-141. Prevention of diseases — Religious organizations — Definitions.

(a) As used in this section:

(1) "Discriminatory action" means an action taken by the State Board of Health to:

(A) Alter the tax treatment of, or cause any tax, penalty, or payment to be assessed against, or deny, delay, revoke, or otherwise make unavailable an exemption from taxation;

(B) Disallow, deny, or otherwise make unavailable a deduction for state tax purposes of any charitable contribution made to or by a religious organization;

(C) Impose, levy, or assess a monetary fine, fee, civil or criminal penalty, damages award, or injunction; or

(D) Withhold, reduce, exclude, terminate, materially alter the terms or conditions of, or otherwise make unavailable or deny any:

(i) State grant, contract, subcontract, cooperative agreement, guarantee, loan, scholarship, or other similar benefit from or to a religious organization;

(ii) Entitlement or benefit under a state benefit program from or to a religious organization; or

(iii) License, certification, accreditation, recognition, or other similar benefit, position, or status from or to a religious organization;

(2) "Religious organization" means:

(A) A house of worship, including without limitation a church, synagogue, shrine, mosque, or temple;

(B) A religious group, corporation, association, educational institution, ministry, order, society, or similar entity, without regard to whether the entity is integrated or affiliated with a house of worship; or

(C) An officer, owner, employee, manager, religious leader, clergy, or minister of an entity or organization under this subdivision (a)(2); and

(3) "Religious service" means a meeting, gathering, or assembly of two (2) or more persons organized by a religious organization for the purpose of worship, teaching, training, providing educational services, conducting religious rituals, or involving the exercising of the right to practice religion.

(b)(1) The board shall not prohibit or limit a religious organization from continuing to operate or engage in religious services during a disaster emergency under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq.

(2)(A) This section does not prevent the board from requiring religious organizations to comply with neutral health, safety, or occupancy requirements issued under state or federal law that are applicable to all organizations and businesses.

(B) The board shall not enforce a health, safety, or occupancy requirement under subdivision (b)(2)(A) of this section that imposes a substantial burden on a religious organization unless the board demonstrates that applying the requirement to the religious organization is essential to further a compelling governmental interest and is the least restrictive means of furthering the compelling governmental interest.

(3) The board shall not take discriminatory action under this subchapter against a religious organization wholly or partially on the basis that the religious organization:

(A) Is religious;

(B) Operates or seeks to operate during a disaster emergency; or

(C) Engages in the exercising of the right to practice religion protected by the First Amendment to the United States Constitution.

(c)(1) A religious organization may assert a violation of this section as a claim against the board in a judicial or administrative proceeding or as a defense in a judicial or administrative proceeding.

(2) An action under this section may be commenced and relief may be granted in a judicial proceeding without regard to whether the religious organization commencing the action has sought or exhausted all administrative remedies.

(3) A religious organization that successfully asserts a claim or defense under this section may recover:

(A) Declaratory relief;

(B) Injunctive relief to prevent or remedy a violation or the effect of a violation of this section;

(C) Compensatory damages for pecuniary and non-pecuniary losses;

(D) Reasonable attorney's fees and costs; and

(E) Any other appropriate relief.

(d) Sovereign, governmental, and qualified immunities to suit and from liability are waived and abolished to the extent allowed under law.

(e) This section shall be construed in favor of a broad protection of free exercise of religion.

(f)(1) The protection of free exercise of religion afforded under this section is in addition to the protections provided under federal law, state law, the United States Constitution, and the Arkansas Constitution.

(2) This section does not preempt or repeal any state or local law that is equally or more protective of free exercise of religion.

(3) This section does not narrow the meaning or application of any state or local law protecting the free exercise of religion.

(g)(1) This section applies to and in cases of conflict supersedes any statute that infringes upon the free exercise of religion protected by this section, unless a conflicting statute is expressly made exempt from the application of this section.

(2) This section applies to and in cases of conflict supersedes any ordinance, rule, regulation, order, opinion, decision, practice, or other exercise of the board's authority that infringes upon the free exercise of religion protected under this section.

(h) If a provision or application of this section is held to be invalid under law, the remainder and the application of the section is not affected.

(i) A religious organization shall bring an action to assert a claim under this section no later than two (2) years after the date the religious organization knew or should have known that a discriminatory action or other violation of this section was taken against the religious organization.

History. Acts 2021, No. 94, § 3.

A.C.R.C. Notes. Acts 2021, No. 94, § 1, provided: "LEGISLATIVE INTENT."

"The General Assembly finds that:

"(1) Religion provides extensive benefits to the country by meeting the spiritual needs of the populace and by supporting vital social needs, including without limitation social services, health care, and economic activity;

"(2) Religion contributes one trillion two hundred billion dollars (\$1,200,000,000,000) annually to the nation's economy and society, including without limitation charitable activities, health care, educational services, volunteer activities to assist the poor and individuals struggling with addiction or mental illness, and job training programs;

"(3) In the article 'The Socio-economic Contribution of Religion to American So-

ciety: An Empirical Analysis', researchers found that 'Congregations, businesses inspired by faith, faith-based charities and institutions not only build communities and families but also strengthen our economy in every town and city of the country.';

"(4) '[E]ven in a pandemic, the Constitution cannot be put away and forgotten. The restrictions..., by effectively barring many from attending religious services, strike at the very heart of the First Amendment's guarantee of religious liberty.' *Roman Catholic Diocese v. Cuomo*, 2020 U.S. LEXIS 5708, 208 L. Ed. 2d 206, ____ S. Ct. ____, 2020 WL 6948354 (per curiam);

"(5) 'The only explanation for treating religious places differently seems to be a judgment that what happens there just isn't as 'essential' as what happens in

secular spaces...That is exactly the kind of discrimination the First Amendment forbids.' *Id.* (Gorsuch, J., concurring);

"(6) 'The Constitution forbids laws that prohibit the free exercise of religion. That guarantee protects not just the right to be a religious person, holding beliefs inwardly and secretly; it also protects the right to act on those beliefs outwardly and publicly.' *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246, 2276 (2020) (Gorsuch, J., concurring);

"(7) The United States Supreme Court has 'long recognized the importance of protecting religious actions, not just religious status.' *Id.*;

"(8) '[T]he First Amendment protects the 'freedom to act' as well as the 'freedom to believe'.' *Id.* (quoting *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940));

"(9) The Free Exercise Clause of the First Amendment of the United States Constitution 'protect[s] religious observers against unequal treatment' under the law. *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 542 (1993) (quoting *Hobbie v. Unemployment Appeals Comm'n of Fla.*, 480 U.S. 136, 148 (Stevens, J., concurring));

"(10) 'What benefits the government decides to give, whether meager or munificent, it must give without discrimination against religious conduct.' *Espinoza* at 2277 (Gorsuch, J., concurring);

"(11) 'Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists.' *Thomas v. Review Bd. of Ind. Employment Security Div.*, 450 U.S. 707, 717-18 (1981);

"(12) 'The First Amendment does not allow our leaders to decide which rights to honor and which to ignore.' *Spell v. Edwards*, 962 F.3d 175, 183 (5th Cir. 2020) (Ho, J., concurring);

"(13) 'Government does not have carte blanche, even in a pandemic, to pick and choose which First Amendment rights are 'open' and which remain 'closed'.' *Id.* at 181;

"(14) Government officials may not prefer the transmission of secular views over religious ones. *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 830-31 (1995); and

"(15) The government may not permit 'life-sustaining' operations to continue during a state of emergency without also permitting 'soul-sustaining' operations such as religious services to continue, especially when the religious services 'adhere to all the public health guidelines required of the other services.' *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)."

CHAPTER 9

HEALTH FACILITIES AND SERVICES GENERALLY

SUBCHAPTER 5 — PEER REVIEW COMMITTEES

20-9-502. Liability of committee members.

CASE NOTES

Discovery.

Circuit court abused its discretion in denying a terminated surgeon's motions to compel production from the hospital of the peer review records of similarly situated physicians on the medical staff and the identities of physicians who complained about his treatment of patients;

the disputed discovery fit within the plain language of § 16-46-105(b)(2) because the discovery sought was in a legal action brought by a medical practitioner subjected to disciplinary action by a hospital medical-staff or medical-review committee. *Williams v. Baptist Health*, 2020 Ark. 150, 598 S.W.3d 487 (2020).

20-9-503. Proceeding and records confidential — Exception.

CASE NOTES

Discovery.

The exception in § 16-46-105(b)(2) does not limit a terminated physician to obtaining only the medical records and documents reviewed and used in the physician’s own peer-review proceedings. *Williams v. Baptist Health*, 2020 Ark. 150, 598 S.W.3d 487 (2020).

Circuit court abused its discretion in denying a terminated surgeon’s motions to compel production from the hospital of the peer review records of similarly situ-

ated physicians on the medical staff and the identities of physicians who complained about his treatment of patients; the disputed discovery fit within the plain language of § 16-46-105(b)(2) because the discovery sought was in a legal action brought by a medical practitioner subjected to disciplinary action by a hospital medical-staff or medical-review committee. *Williams v. Baptist Health*, 2020 Ark. 150, 598 S.W.3d 487 (2020).

SUBTITLE 3. MENTAL HEALTH

CHAPTER 47

TREATMENT OF PERSONS WITH MENTAL ILLNESS

SUBCHAPTER 2 — COMMITMENT AND TREATMENT

20-47-210. Immediate confinement — Initial evaluation and treatment.

CASE NOTES

Timely Hearing.

Circuit court properly denied a patient’s motion to dismiss his involuntary commitment to a treatment facility for issues related to his mental health because a

probable cause hearing was held within 72 hours of a petition being filed, and that petition was likewise filed within 72 hours of the patient’s detention. *Springer v. Jensen*, 2020 Ark. App. 435 (2020).

SUBCHAPTER 8 — BEHAVIORAL HEALTH CRISIS INTERVENTION PROTOCOL
ACT OF 2017

20-47-801. Title.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Amie Alexander & Sarah Giammo, Survey of Legislation 2017: Arkansas General As-

sembly, 40 U. Ark. Little Rock L. Rev. 305 (2017).

SUBTITLE 5. SOCIAL SERVICES**CHAPTER 77****MEDICAL ASSISTANCE**

SUBCHAPTER.

25. OFFICE OF MEDICAID INSPECTOR GENERAL.**SUBCHAPTER 25 — OFFICE OF MEDICAID INSPECTOR GENERAL**

SECTION.

20-77-2509. Reports required of Medicaid

Inspector General — Definition.

20-77-2509. Reports required of Medicaid Inspector General — Definition.

(a) The Medicaid Inspector General shall, no later than October 1 of each year, submit to the Secretary of the Department of Inspector General, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, Arkansas Legislative Audit, the Legislative Council, and the Attorney General a report summarizing the activities of the Office of Medicaid Inspector General during the preceding calendar year.

(b) The report required under subsection (a) of this section shall include without limitation:

(1) The number, subject, and other relevant characteristics of:

(A) Investigations initiated and completed, including without limitation outcome, region, source of complaint, and whether or not the investigation was conducted jointly with the Attorney General;

(B) Audits initiated and completed, including without limitation outcome, region, the reason for the audit, the total state and federal dollar value identified for recovery, the actual state and federal recovery from the audits, and the amount repaid to the Centers for Medicare & Medicaid Services;

(C) Administrative actions initiated and completed, including without limitation outcome, region, and type;

(D)(i) Referrals for prosecution to the Attorney General and to federal or state law enforcement agencies and referrals to licensing authorities.

(ii) Information reported under subdivision (b)(1)(D)(i) of this section shall include without limitation the status and region of an administrative action;

(E) Civil actions initiated by the office related to improper payments, the resulting civil settlements entered, overpayments identified, and the total dollar value identified and collected; and

(F) Administrative and education activities conducted to improve compliance with Medicaid program policies and requirements; and

(2)(A) A narrative that evaluates the office's performance, describes specific problems with the procedures and agreements required under this section, discusses other matters that may have impaired the office's effectiveness, and summarizes the total savings to the state medical assistance program.

(B)(i) In addition to total savings, the narrative shall detail net savings in state funds.

(ii) As used in subdivision (b)(2)(B)(i) of this section, "net savings" means amounts recovered by the office less payments made to the Centers for Medicare & Medicaid Services and the costs of state administrative procedures.

(c) The office may subpoena individuals, books, electronic and other records, and documents that are necessary for the completion of reports under this section.

(d)(1) In making the report required under subsection (a) of this section, the Medicaid Inspector General shall not disclose information that jeopardizes an ongoing investigation or proceeding.

(2) The Medicaid Inspector General may disclose information in the report required under subsection (a) of this section if the information does not jeopardize an ongoing investigation or proceeding and the Medicaid Inspector General fully apprises the designated recipients of the scope and quality of the office's activities.

(e) Quarterly by April 1, July 1, October 1, and January 1 of each year, the Medicaid Inspector General shall submit to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, Arkansas Legislative Audit, the Legislative Council, and the Attorney General an accountability statement providing a statistical profile of the referrals made to the Medicaid Fraud Control Unit of the Office of the Attorney General, audits, investigations, and recoveries.

History. Acts 2013, No. 1499, § 2; 2019, No. 910, §§ 5263, 5264.

Publisher's Notes. This section is being set out to correct the language in (e) in the 2019 supplement pamphlet.

Amendments. The 2019 amendment

substituted "Secretary of the Department of Inspector General" for "Governor" in (a); and substituted "Medicaid Inspector General" for "inspector" in (d)(1), twice in (d)(2), and in (e).

TITLE 21

PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER 6 — ARKANSAS WHISTLE-BLOWER ACT

21-1-601. Title.

CASE NOTES

Sovereign Immunity.

Because former employee's claims for injunctive relief were unquestionably legal claims against the State of Arkansas, sovereign immunity barred his claims under the Arkansas Whistle-Blower Act, § 21-1-601 et seq., and the state and federal constitutions against the state officials in their official capacities; and plaintiff's conclusory statements and bare allegations were insufficient to establish an illegal, unconstitutional, or ultra vires act such that sovereign immunity would not apply. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

Arkansas Governor did not waive sovereign immunity by signing the Arkansas Whistle-Blower Act because the governor does not enact legislation. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

Supreme Court of Arkansas declined to overturn Bd. of Trs. of Univ. of Ark. v. Andrews, 2018 Ark. 12. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

Where former state employee alleged that he was terminated because he refused to violate the state policy to hire the most qualified individual for a position, and asserted claims under the Arkansas Whistle-Blower Act, § 21-1-601 et seq., and the federal and state constitutions, the circuit court erred when it found that sovereign immunity barred plaintiff's claims against the state officials in their individual capacities; in their individual capacities, the state officials did not enjoy the immunity granted to the State under Ark. Const., Art. 5, § 20. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

21-1-602. Definitions.

CASE NOTES

Public Employer.

Law professor's Arkansas Whistle-Blower Act (AWBA) individual-capacity claims against state university officials

were properly dismissed because the AWBA does not provide for suits against individuals. *Steinbuch v. Univ. of Ark.*, 2019 Ark. 356, 589 S.W.3d 350 (2019).

21-1-603. Public employer conduct prohibited — Good faith communication.

CASE NOTES

Public Employer.

Law professor's Arkansas Whistle-Blower Act (AWBA) individual-capacity

claims against state university officials were properly dismissed because the AWBA does not provide for suits against

individuals. *Steinbuch v. Univ. of Ark.*, 2019 Ark. 356, 589 S.W.3d 350 (2019).

21-1-605. Remedies.

CASE NOTES

Sovereign Immunity.

Because former employee's claims for injunctive relief were unquestionably legal claims against the State of Arkansas, sovereign immunity barred his claims under the Arkansas Whistle-Blower Act, § 21-1-601 et seq., and the state and federal constitutions against the state officials in their official capacities; and plaintiffs' conclusory statements and bare allegations were insufficient to establish an illegal, unconstitutional, or ultra vires act such that sovereign immunity would not apply. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

Arkansas Governor did not waive sovereign immunity by signing the Arkansas Whistle-Blower Act because the governor does not enact legislation. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

Supreme Court of Arkansas declined to overturn Bd. of Trs. of Univ. of Ark. v. Andrews, 2018 Ark. 12. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

Where former state employee alleged that he was terminated because he refused to violate the state policy to hire the most qualified individual for a position, and asserted claims under the Arkansas Whistle-Blower Act, § 21-1-601 et seq., and the federal and state constitutions, the circuit court erred when it found that sovereign immunity barred plaintiffs' claims against the state officials in their individual capacities; in their individual capacities, the state officials did not enjoy the immunity granted to the State under Ark. Const., Art. 5, § 20. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

21-1-608. Notification of rights.

CASE NOTES

Sovereign Immunity.

State university's provision of statutorily required notice of employees' rights under the Arkansas Whistle-Blower Act did not waive the university's sovereign immunity; providing the notice did not

voluntarily abandon a known right because the university was required by statute to notify employees. *Steinbuch v. Univ. of Ark.*, 2019 Ark. 356, 589 S.W.3d 350 (2019).

CHAPTER 6

FEES

SUBCHAPTER 3 — COUNTY OFFICERS

21-6-301. Fees not basis for compensation.

CASE NOTES

Eligibility for Retirement System.

Substantial evidence supported the finding of the Board of Trustees of the Arkansas Public Employees' Retirement System that former employees of nursing

homes owned by counties were not "county employees" under the relevant statutes and were not eligible for membership in the retirement system because their compensation was payable from pa-

tient revenues rather than from appropriated funds. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

Assuming that the nursing-home administrative boards and their respective counties were synonymous under the definitions of “County employees” and “Employees” in § 24-4-101, the Board of Trustees of the Arkansas Public Employees’

Retirement System’s finding that the former employees of county-owned nursing homes were not paid from appropriated funds as required by the definition of “Employees” in § 24-4-101 was affirmed as no ordinances in the record specifically designated county money for their compensation. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

CHAPTER 8

ETHICS AND CONFLICTS OF INTEREST

SUBCHAPTER 3 — CODE OF ETHICS

21-8-303. Enforcement.

CASE NOTES

Attorney’s Fees Denied.

Where a registered voter met his burden of proving that a candidate was ineligible to run for the office of circuit court judge, the circuit court did not err in

deciding not to award fees under subsection (b) of this section as there was no evidence that the prosecuting attorney’s office first failed or refused to act. *Wyatt v. Carr*, 2020 Ark. 21, 592 S.W.3d 656 (2020).

21-8-305. Person convicted of public trust crime ineligible as candidate for constitutional office or to hold constitutional office.

CASE NOTES

Burden of Proof.

Circuit court did not clearly err in determining that a registered voter had established by a preponderance of the evidence that a circuit court judge candidate had pleaded guilty to and been convicted of violations of the Arkansas Hot Check Law, § 5-37-301 et seq., where it required the voter to demonstrate that he had a

clear and certain right to the disqualification of the candidate, thereby correctly applying the burden of proof. The candidate also failed to present documentary evidence to contradict the certified court records and admitted that he was 25 years old at the time, which was consistent with the certified court record. *Wyatt v. Carr*, 2020 Ark. 21, 592 S.W.3d 656 (2020).

CHAPTER 9
LIABILITY OF STATE AND LOCAL GOVERNMENTS

SUBCHAPTER 3 — LIABILITY OF POLITICAL SUBDIVISIONS

21-9-301. Tort liability — Immunity declared.

CASE NOTES

Police Officer.

Police officer’s conduct in arresting appellant for domestic battery was objectively reasonable where the victim told the officer at the scene that he had been struck, the officer observed that the victim’s ear was red where he said he had been struck, the victim’s mother said she

had witnessed the incident, and the officer observed that appellant appeared intoxicated and extremely agitated. Thus, summary judgment on qualified immunity grounds was affirmed. *Elliott v. Morgan*, 2020 Ark. App. 297, 603 S.W.3d 570 (2020).

TITLE 22
PUBLIC PROPERTY

CHAPTER 3
PUBLIC BUILDINGS AND OTHER FACILITIES

SUBCHAPTER 2 — CAPITOL BUILDING AND GROUNDS GENERALLY

22-3-221. Ten Commandments Monument Display Act.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Josh Burk, Essay: A Torahic Case Against SJR8, 40 U. Ark. Little Rock L. Rev. 121 (2017).

TITLE 23
PUBLIC UTILITIES AND REGULATED INDUSTRIES

SUBTITLE 1. PUBLIC UTILITIES AND CARRIERS

CHAPTER.
17. TELEPHONE AND TELEGRAPH COMPANIES.

SUBTITLE 2. FINANCIAL INSTITUTIONS AND SECURITIES

CHAPTER.
39. MORTGAGE LOAN COMPANIES AND LOAN BROKERS.

SUBTITLE 4. MISCELLANEOUS REGULATED INDUSTRIES

CHAPTER.

115. ARKANSAS SCHOLARSHIP LOTTERY ACT.

SUBTITLE 1. PUBLIC UTILITIES AND CARRIERS

CHAPTER 3

**REGULATION OF UTILITIES AND CARRIERS
GENERALLY**

SUBCHAPTER 1 — GENERAL PROVISIONS

23-3-119. Complaints.

CASE NOTES

Jurisdiction.

Circuit court erred in dismissing the property owners' complaint against an electric company and in finding that the Arkansas Public Service Commission had primary jurisdiction of the case; there was no dispute that the company had a right to use its own existing lines to transmit broadband services, but the owners' issue was with the company's entry onto their

land to install completely new lines for broadband services without just compensation or an assessment of damages for the increased interference. The circuit court had exclusive, original jurisdiction to adjudicate a dispute involving private-property rights and damages for inverse condemnation and increased interference. *Stanley v. Ozarks Elec. Coop. Corp.*, 2019 Ark. App. 560, 591 S.W.3d 322 (2019).

CHAPTER 17

TELEPHONE AND TELEGRAPH COMPANIES

SUBCHAPTER.

4. TELECOMMUNICATIONS REGULATORY REFORM ACT OF 2013.

SUBCHAPTER 4 — TELECOMMUNICATIONS REGULATORY REFORM ACT OF 2013

SECTION.

23-17-403. Definitions.

23-17-409. Authorization of competing local exchange carriers.

Effective Dates. Acts 2021, No. 67, § 3: Feb. 4, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that voice, data, broadband, video, and wireless telecommunications services are necessities; that without access to voice, data, broadband, video, and wireless tele-

communications services, citizens of Arkansas also lack access to healthcare services, education services, and other essential services; and that this act is immediately necessary to allow government entities to provide high quality voice, data, broadband, video, and wireless telecommunications services to their

citizens. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is

neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

23-17-403. Definitions.

As used in this subchapter:

(1) "Access line" means a communications facility extending from a customer's premises to a serving central office comprising a subscriber line and, if necessary, a trunk facility;

(2) "Access minute", unless otherwise defined by the Arkansas Public Service Commission, means the measurement of usage to provision communications between:

(A) A customer premises and an interexchange carrier's point of interconnection with a local exchange carrier's network for the completion of end-user calls to the public switched network for the origination and termination of interexchange long distance traffic; and

(B) A customer premises and another LEC's point of termination with a local exchange carrier's network for the completion of end-user calls to the public switched network for the origination and termination of interexchange long distance traffic;

(3)(A) "Affiliate" means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or that is under common ownership or control with another entity.

(B) For the purpose of this definition, "owns or controls" means holding at least a majority of the outstanding voting power;

(4) "AICCLP member" means an ILEC that is eligible to be a member of the AICCLP after December 31, 2003, and that has not terminated its membership under § 23-17-416(f)(2);

(5)(A) "AICCLP rate adjustment" means the local service rate adjustment, determined by the AICCLP administrator, that may be charged by each AICCLP member to its customers to recover a portion of its carrier common line net revenue requirement.

(B)(i) For any AICCLP member that is eligible to be a member of the AICCLP as of January 1, 2004, for whom the sum of the residential local exchange rate and extended area service additive is higher than the average residential local exchange rate for all members eligible to be members as of January 1, 2004, the monthly AICCLP rate adjustment shall be the lesser of fifty cents (50¢) or an amount that yields the total monthly carrier common line net revenue requirement per access line.

(ii) For any AICCLP member that is eligible to be a member of the AICCLP as of January 1, 2004, for whom the sum of its residential local exchange rate and extended area service additive is lower than

the average residential local exchange rate for all members eligible to be members as of January 1, 2004, the monthly AICCLP rate adjustment shall be the lesser of seventy-five cents (75¢) or an amount that yields the total monthly carrier common line net revenue requirement per access line.

(iii) If the amount due to an AICCLP member under § 23-17-416(h) is limited due to the annual one million three hundred thousand dollar (\$1,300,000) cap under § 23-17-416(e)(8)(B)(i) and if the member's AICCLP rate adjustment and the amount due to the AICCLP member under § 23-17-416(h) do not allow the member to recover its common line net revenue requirement, the member may charge an additional amount for local rates to recover its carrier common line net revenue requirement;

(6) "Annual unseparated unlimited loop requirement" means a financial algorithm calculated annually by NECA and USAC that includes all the loop investment, expenses, and other loop costs of providing service within the study area of an eligible telecommunications carrier;

(7) "Arkansas Intrastate Carrier Common Line Pool" or "AICCLP" means the unincorporated organization of the providers of Arkansas telecommunications services, authorized by the commission and by state law, whose purpose is to manage billing, collection, and distribution of the carrier common line revenue requirements;

(8) "Arkansas intrastate telecommunications services revenues" means the revenues of all carriers that are not ILECs, that are derived from end-users for telecommunications within Arkansas and telecommunications services provided within Arkansas, including messages that are switched or otherwise temporarily transported outside of Arkansas in the process of delivering the message within Arkansas;

(9) "Average schedule company" means a company that uses a proxy established from a formula using the average costs of a group of companies rather than using the company's specific costs in reporting to NECA;

(10) "Basic local exchange service" means the service provided to the premises of residential or business customers composed of the following:

(A) Voice-grade access to the public switched network, with ability to place and receive calls;

(B) Touch-tone service availability;

(C) Flat-rate residential local service and business local service;

(D) Access to emergency services (911/E911) where provided by local authorities;

(E) Access to basic operator services;

(F) A standard white-page directory listing;

(G) Access to basic local directory assistance;

(H) Access to long distance toll service providers; and

(I) The minimum service quality as established and required by the commission on February 4, 1997;

(11) "Carrier common line net revenue requirement" means the monthly variable funding requirement of an AICCLP member, which is calculated as the sum of the member's intrastate carrier common line revenue requirement, the member's terminating carrier common line expense based on its per-minute terminations on other ILECs, the member's Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund expense, and the member's share of AICCLP administrative fees, minus the sum of the carrier common line revenue, based on per-minute terminations received from other ILECs, carrier common line revenue received from underlying carriers for originating and terminating access minutes, the AICCLP rate adjustment, and the fixed ILEC retail billed minutes of use expense based on the data development period determination of average monthly retail billed minutes of use expense of the member;

(12) "Commercial mobile service" means cellular, personal communications systems and any service regulated pursuant to Part 20 of the rules and regulations of the Federal Communications Commission, 47 C.F.R. Part 20, or any successor provisions;

(13) "Commission" means the Arkansas Public Service Commission;

(14) "Competing local exchange carrier" or "CLEC" means a local exchange carrier that is not an incumbent local exchange carrier;

(15) "Data development period" means the time period in which the AICCLP members and initial exiting ILECs shall obtain relevant data necessary to:

(A) Calculate the fixed amounts of retail billed minutes-of-use expense and to test and obtain reliability of the billing and reporting systems to be used by the AICCLP; and

(B) Calculate the fixed carrier common line revenue shortfall for members required to exit the pool on December 31, 2003;

(16) "Electing company" means a local exchange carrier that elects to be regulated pursuant to §§ 23-17-406 — 23-17-408;

(17) "Eligible telecommunications carrier" or "ETC" means the local exchange carrier determined in accordance with § 23-17-405;

(18) "Embedded investment" means the amount of investment in a telephone plant that has already been made by an incumbent local exchange carrier as of February 4, 1997;

(19) "Exiting ILEC" means an ILEC that terminates its membership in the AICCLP under § 23-17-416(f);

(20) "Extended area service" means an unlimited local service provided to the customer at a fixed rate that:

(A) Is mandated by the commission at the election of customers within a local exchange area;

(B) Provides one-way or two-way calling between basic local exchange service customers within the local exchange area of one (1) or more incumbent local exchange carriers; and

(C) Is not included as part of basic local exchange service;

(21) "Facilities" means any of the physical elements of the telephone plant that are needed to provide or support telecommunications ser-

vices, including switching systems, cables, fiber optic and microwave radio transmission systems, measuring equipment, billing equipment, operating systems, billing systems, ordering systems, and all other equipment and systems that a telecommunications service provider uses to provide or support telecommunications services;

(22) "FCC" means the Federal Communications Commission;

(23) "Federal act" means the Communications Act of 1934, as amended;

(24) "Fixed carrier common line revenue shortfall" means the total annual funding requirement of an ILEC that must exit the AICCLP under § 23-17-416(f)(1), which is calculated as the sum of an ILEC's intrastate carrier common line revenue requirement, the ILEC's terminating carrier common line expense based on its per-minute terminations on other ILECs, and the ILEC Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund expense, minus the sum of the carrier common line revenue, based on per-minute terminations received from other ILECs, carrier common line revenue received from underlying carriers for originating and terminating access minutes, and the fixed ILEC retail billed minutes of use expense based on the data development period determination of average monthly retail billed minutes of use expense of the ILEC;

(25) "Fixed ILEC retail billed minutes of use expense" means the fixed determination of the average retail billed minutes-of-use expense paid to the AICCLP by the ILEC based upon the ILEC's three-month average retail billed minutes-of-use expense during its applicable data development period, as determined under § 23-17-416(h), exclusive of any retail billed minutes-of-use expense associated with retail billed minutes of uses provided by a toll reseller of an underlying carrier that is an ILEC;

(26) "Government entity" includes without limitation all Arkansas state agencies, commissions, boards, authorities, and all Arkansas public educational entities, including school districts, and political subdivisions, including incorporated and unincorporated cities and towns and all institutions, agencies or instrumentalities of municipalities, consolidated utility districts, and county governments;

(27) "ILEC Arkansas Calling Plan Fund and Extension of Telecommunications Facilities Fund expense" means the charge assessed against an ILEC in proportion to the AICCLP credits that were eliminated by former § 23-17-404(e)(4)(D)(iv)(b);

(28) "ILEC intrastate carrier common line revenue requirement" means the fixed annual payment that each ILEC was entitled to receive from the AICCLP, before any offsets or adjustments, as provided in the Arkansas Intrastate Carrier Common Line Pool tariff, as it existed before January 1, 2004;

(29) "Incumbent local exchange carrier" or "ILEC" means, with respect to a local exchange area, a local exchange carrier, including successors and assigns, that is certified by the commission and was providing basic local exchange service on February 8, 1996;

(30) "Interconnected VoIP service" has the meaning defined by 47 C.F.R. 9.3, as it existed on January 1, 2013;

(31) "Interstate access charge pools" means the system, currently administered by the National Exchange Carrier Association, Inc., wherein participating local exchange carriers pool billed interstate access revenues;

(32) "Local exchange area" means the geographic area, approved by the commission, encompassing the area within which a local exchange carrier is authorized to provide basic local exchange services and switched-access services;

(33) "Local exchange carrier" or "LEC" means a telecommunications provider of basic local exchange service and switched-access service. The term does not include commercial mobile service providers;

(34) "Local switching support" means funding to assist high-cost companies in recovering the costs of switching intrastate calls;

(35) "National Exchange Carrier Association, Inc.," or "NECA" means a corporation by that name or its successor that performs various administrative functions and procedural duties prescribed to it by the FCC and others;

(36) "Network element" means a facility or equipment used in the provision of a telecommunications service. The term also includes features, functions, and capabilities that are provided by means of the facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service;

(37) "Resale" means the purchase of services by one (1) local exchange carrier from another local exchange carrier for the purpose of reselling those services directly or indirectly to an end-user customer;

(38) "Rural telephone company" means a local exchange carrier defined as a rural telephone company in the federal act as of February 4, 1997;

(39) "Special intrastate ILEC revenue" means the revenue a toll reseller pays to an ILEC when the ILEC provides toll services to the toll reseller;

(40) "Study area" means a geographic area designated by the FCC and used by NECA or USAC for calculation of cost per loop within the geographic area's boundaries for federal high-cost loop support;

(41) "Switched-access service" means the provision of communications between a customer premise and an interexchange carrier's point of interconnection with a local exchange carrier's network for the completion of end-user calls to the public switched network for the origination or termination of interexchange long distance traffic;

(42) "Telecommunications provider" means any person, firm, partnership, corporation, association, or other entity that offers telecommunications services to the public for compensation;

(43) "Telecommunications Providers Rules" or "TPRs" means those rules applicable to telecommunications providers that have been adopted by the commission;

(44)(A) "Telecommunications services" means the offering to the public for compensation the transmission of voice, data, or other electronic information at any frequency over any part of the electromagnetic spectrum, notwithstanding any other use of the associated facilities.

(B) The term does not include radio and television broadcast or distribution services, or the provision or publishing of yellow pages, regardless of the entity providing the services, or services to the extent that the services are used in connection with the operation of an electric utility system owned by a government entity;

(45)(A) "Tier one company" means any incumbent local exchange carrier that, together with its Arkansas affiliates that are also incumbent local exchange carriers, provides basic local exchange services to greater than one hundred fifty thousand (150,000) access lines in the State of Arkansas on February 4, 1997.

(B) Changes in designation of an incumbent local exchange carrier, or portions thereof, as a tier one company or non-tier one company may be effected by prior approval from the commission pursuant to § 23-17-411(i);

(46) "Toll reseller" means a carrier that resells intrastate telecommunications services that are provided to the carrier by an underlying carrier;

(47)(A) "Total customer access base" means the total of all eligible telecommunications carrier customer access lines within Arkansas of an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another entity.

(B) For the purposes of subdivision (47)(A) of this section, "own" means to own an equity interest or the equivalent thereof of more than ten percent (10%);

(48) "Underlying carrier" means a facilities-based CLEC or an inter-exchange carrier, other than an ILEC, that originates and terminates intrastate interexchange calls on the public switched network directly or through resale to a toll reseller or an ILEC that provides the toll services used by a toll reseller;

(49) "Universal service" means those telecommunications services that are defined and listed in the definition of basic local exchange service until changed by the commission pursuant to § 23-17-404(e)(2)(A);

(50) "Universal Service Administration Company" or "USAC" means a corporation under that name or its successor that performs various administrative and procedural duties prescribed to it by the FCC and others;

(51) "Wire center" means the location of one (1) or more local switching systems, a point at which end user's loops within a defined geographic area converge;

(52) "Wireless ETC" means a wireless eligible telecommunications carrier that is a commercial mobile service provider; and

(53) "Wireline ETC" means a wireline eligible telecommunications carrier that is a local exchange carrier.

History. Acts 1997, No. 77, § 3; 2003, §§ 2-5; 2019, No. 198, § 2; 2021, No. 67, No. 1764, § 1; 2003, No. 1788, §§ 1-6; § 1.
2007, No. 385, §§ 2, 3; 2013, No. 442,

23-17-409. Authorization of competing local exchange carriers.

(a)(1)(A) Consistent with the federal act and the provisions of § 23-17-410, the Arkansas Public Service Commission is authorized to grant certificates of convenience and necessity to telecommunications providers authorizing them to provide telecommunications services, including basic local exchange service or switched-access service, or both, to an incumbent local exchange carrier's local exchange area if and to the extent that the applications otherwise comply with state law, designate the geographic areas proposed to be served by the applicants, and the applicants demonstrate that they possess the financial, technical, and managerial capacity to provide the competing services.

(B) No telecommunications provider shall operate as a CLEC in this state without first obtaining from the commission a certificate of public convenience and necessity.

(2) Competing local exchange carriers shall be required to maintain a current tariff or price list with the commission and to make prices and terms of service available for public inspection.

(3) Retail prices of competing local exchange carriers shall not require prior review or approval by the commission.

(b)(1) Except as otherwise provided in subdivisions (b)(2), (b)(5), and (b)(6) of this section, a government entity shall not provide, directly or indirectly, basic local exchange, voice, data, broadband, video, or wireless telecommunications services.

(2) After reasonable notice to the public and a public hearing, a government entity owning an electric utility system or television signal distribution system may provide, directly or indirectly, voice, data, broadband, video, or wireless telecommunications services and make any telecommunications capacity or associated facilities that the government entity now owns, or may construct or acquire, available to the public upon terms and conditions as may be established by the government entity's governing authority, except the government entity may not use the telecommunications capacity or associated facilities to provide, directly or indirectly, basic local exchange service.

(3) Any restriction contained in this subsection shall not be applicable to the provision of telecommunications services to the extent the telecommunications services are used solely for 911, E911, or other emergency and law enforcement services, or for the provision of data, broadband, or non-entertainment video telecommunications services or facilities by or to a medical institution or an institution of higher education to its students, faculty, staff, or patients, as the provision of

the telecommunications services or facilities relates to academic, research, and healthcare information technology applications under the Arkansas Information Systems Act of 1997, § 25-4-101 et seq.

(4) A government entity may purchase voice, data, broadband, video, or wireless telecommunications services, directly or indirectly, from a private provider through a contract administered and services managed by the Division of Information Systems under the Arkansas Information Systems Act of 1997, § 25-4-101 et seq.

(5) A government entity may, on its own or in partnership with a private entity, apply for funding under a program for grants or loans to be used for the construction, acquisition, or leasing of facilities, land, or buildings used to deploy broadband services in unserved areas, as defined under the terms of the granting or lending program, and if the funding is awarded, then provide, directly or indirectly, voice, data, broadband, video, or wireless telecommunications services to the public in the unserved areas.

(6)(A) A government entity may acquire, construct, furnish, equip, own, operate, sell, convey, lease, rent, let, assign, dispose of, contract for, or otherwise deal in facilities and apparatus for one (1) or more of the following:

- (i) Voice services;
- (ii) Data services;
- (iii) Broadband services;
- (iv) Video services; or
- (v) Wireless telecommunications services.

(B) If a government entity, other than a government entity qualified to provide services under subdivision (b)(2), subdivision (b)(3), or subdivision (b)(5) of this section, issues bonds or other indebtedness to acquire, construct, furnish, or equip facilities for the provision of voice services, data services, broadband services, video services, or wireless telecommunications services through a special tax or general obligation bond initiative, then the government entity shall:

(i) Partner, contract, or otherwise affiliate with an entity that is experienced in the operation of the facilities to be acquired or constructed;

(ii) Conduct the due diligence required by the industry for the project and required by law for the bonds or indebtedness utilized for the project;

(iii) Provide notice at least ten (10) days before a public hearing on the project;

(iv) After due notice has been provided as described in subdivision (b)(6)(B)(iii) of this section, conduct a public hearing on the project; and

(v) Cause an election to be held as required by law.

(c) A governmental entity that operates an electric utility system may deny any telecommunications provider access to its electric utility poles, ducts, conduits, or rights-of-way on a nondiscriminatory basis when there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

(d)(1) Except to the extent required by the federal act and this subchapter, the commission shall not require an incumbent local exchange carrier to negotiate resale of its retail telecommunications services, to provide interconnection, or to sell unbundled network elements to a competing local exchange carrier for the purpose of allowing the competing local exchange carrier to compete with the incumbent local exchange carrier in the provision of basic local exchange service.

(2) Promotional prices, service packages, trial offerings, or temporary discounts offered by the local exchange carrier to its end-user customers are not required to be available for resale.

(e) The prices for unbundled network elements shall include the actual costs, including an allocation of joint and common costs and a reasonable profit.

(f) As provided in 47 U.S.C. §§ 251 and 252, the commission's authority with respect to interconnection, resale, and unbundling is limited to the terms, conditions, and agreements pursuant to which an incumbent local exchange carrier will provide interconnection, resale, or unbundling to a CLEC for the purpose of the CLEC's competing with the incumbent local exchange carrier in the provision of telecommunications services to end-user customers.

(g)(1) As permitted by the federal act, the commission shall approve resale restrictions that prohibit resellers from purchasing retail local exchange services offered by a local exchange carrier to residential customers and reselling those retail services to nonresidential customers, or aggregating the usage of multiple customers on resold local exchange services, or any other reasonable limitation on resale to the extent permitted by the federal act.

(2) The wholesale rate of any existing retail telecommunications services provided by local exchange carriers that are not exempt from 47 U.S.C. § 251(c) and that are being sold for the purpose of resale shall be the retail rate of the service less any net avoided costs due to the resale.

(3) The net avoided costs shall be calculated as the total of the costs that will not be incurred by the local exchange carrier due to its selling the service for resale less any additional costs that will be incurred as a result of selling the service for the purpose of resale.

(h) Incumbent local exchange carriers shall provide competing local exchange carriers, at reasonable rates, nondiscriminatory access to operator services, directory listings and assistance, and 911 service only to the extent required in the federal act.

(i)(1) The commission shall approve any negotiated interconnection agreement or statement of generally available terms filed pursuant to the federal act unless it is shown by clear and convincing evidence that the agreement or statement does not meet the minimum requirements of 47 U.S.C. § 251.

(2) In no event shall the commission impose any interconnection requirements that go beyond those requirements imposed by the

federal act or any interconnection regulations or standards promulgated under the federal act.

(j) In the event the commission is requested to arbitrate any open issues pursuant to 47 U.S.C. § 252, the parties to the arbitration proceeding shall be limited to the persons or entities negotiating the agreement.

History. Acts 1997, No. 77, § 9; 2003, No. 1133, § 3; 2019, No. 198, § 3; 2019, No. 1788, § 8; 2011, No. 1050, § 1; 2013, No. 910, § 6252; 2021, No. 67, § 2.

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CHAPTER 18
LIGHT, HEAT, AND POWER UTILITIES

SUBCHAPTER 8 — BROADBAND OVER POWER LINES ENABLING ACT

23-18-803. Permissible broadband systems.

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23-18-805. Jurisdiction.

CASE NOTES

Private Property Rights.

Circuit court erred in dismissing the property owners’ complaint against an electric company and in finding that the Arkansas Public Service Commission had primary jurisdiction of the case; there was no dispute that the company had a right to use its own existing lines to transmit broadband services, but the owners’ issue was with the company’s entry onto their

land to install completely new lines for broadband services without just compensation or an assessment of damages for the increased interference. The circuit court had exclusive, original jurisdiction to adjudicate a dispute involving private-property rights and damages for inverse condemnation and increased interference. Stanley v. Ozarks Elec. Coop. Corp., 2019 Ark. App. 560, 591 S.W.3d 322 (2019).

SUBTITLE 2. FINANCIAL INSTITUTIONS AND SECURITIES

CHAPTER 39

MORTGAGE LOAN COMPANIES AND LOAN BROKERS

SUBCHAPTER.

5. FAIR MORTGAGE LENDING ACT.

SUBCHAPTER 5 — FAIR MORTGAGE LENDING ACT

SECTION.

23-39-505. Qualifications for licensure — Issuance.

23-39-505. Qualifications for licensure — Issuance.

(a)(1) A person desiring to obtain a license as a loan officer, transitional loan officer, mortgage banker, mortgage broker, or mortgage servicer shall make written application for licensure to the Securities Commissioner in the form prescribed by the commissioner.

(2) The commissioner may approve by rule or order a limited license with limitations, qualifications, or conditions.

(3) The application may require that the information be submitted in an electronic format.

(4) In addition to any other information required under this subchapter or rules adopted by the commissioner, the application shall contain information the commissioner deems necessary and shall include the following:

(A) The applicant's name, address, and Social Security number;

(B) The applicant's form of business and place of organization, including without limitation:

(i) A copy of the applicant's organizational and governance documents; and

(ii) If the applicant is a foreign entity, a copy of the certificate of authority from the Secretary of State;

(C)(i) The applicant's proposed method of and locations for doing business, if applicable.

(ii) The applicant's proposed method of doing business shall include whether the applicant is proposing to be licensed as a mortgage broker, mortgage banker, or mortgage servicer;

(D)(i) The qualifications, business history, and financial condition of the applicant and a managing principal of the applicant.

(ii) The qualifications and business history of persons under subdivision (a)(4)(D)(i) of this section shall include:

(a) A description of an injunction or administrative order, including a denial to engage in a regulated activity by any state or federal authority that had jurisdiction over the applicant;

(b) A conviction of a misdemeanor involving fraudulent dealings or moral turpitude or relating to any aspect of the mortgage industry, the securities industry, the insurance industry, or any other activity pertaining to financial services;

(c) A felony conviction; and

(d) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive fingerprints for a state, national, and international criminal background check; and

(E) A disclosure of a beneficial interest in an affiliated industry business held by the applicant or by a principal, officer, director, or employee of the applicant.

(b) In addition to meeting the requirements imposed by the commissioner under subsection (a) of this section, each individual applicant for licensure as a loan officer shall:

(1) Be at least eighteen (18) years of age;

(2)(A) Have received a high school diploma or a high school equivalency diploma approved by the Adult Education Section.

(B) Subdivision (b)(2)(A) of this section does not apply to an individual who is licensed as a loan officer on July 1, 2007;

(3) Have satisfactorily completed any educational and testing requirements as the commissioner may by rule or order impose; and

(4) Furnish to the commissioner or through an automated licensing system, information concerning the applicant's identity and background, including:

(A) Fingerprints for submission to the Federal Bureau of Investigation and any governmental agency or entity authorized to receive fingerprints for a state, national, and international criminal background check; and

(B) Personal history and experience in a form prescribed by the automated licensing system and the commissioner, including the submission of authorization for the automated licensing system and the commissioner to obtain:

(i) An independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., as it existed on January 1, 2011; and

(ii) Information related to any administrative, civil, or criminal proceeding by a governmental jurisdiction.

(c) Each applicant for licensure as a mortgage broker, mortgage banker, or mortgage servicer shall comply with the following requirements at the time of application and at all times thereafter:

(1) If the applicant is a sole proprietor, the applicant shall have at least three (3) years of experience in mortgage lending or other experience or competency requirements as the commissioner may adopt by rule or order;

(2) If the applicant is a general or limited partnership, at least one (1) of its general partners shall have the experience as described in subdivision (c)(1) of this section;

(3) If the applicant is a corporation, at least one (1) of its principal officers shall have the experience as described in subdivision (c)(1) of this section; and

(4) If the applicant is a limited liability company, at least one (1) of its managers shall have the experience as described under subdivision (c)(1) of this section.

(d) Each applicant shall identify in its application one (1) person meeting the requirements of subsection (c) of this section to serve as the applicant's managing principal.

(e) Each applicant for initial licensure shall pay a filing fee of:

(1) Seven hundred fifty dollars (\$750) for the principal place of business of a mortgage broker, mortgage banker, or mortgage servicer;

(2) One hundred dollars (\$100) for each branch office of a mortgage broker, mortgage banker, or mortgage servicer; and

(3) Fifty dollars (\$50.00) for each loan officer.

(f)(1) Each mortgage broker, mortgage banker, and mortgage servicer shall post a surety bond in an amount:

(A) Based upon loan activity during the previous year;

(B) Not less than one hundred thousand dollars (\$100,000); and

(C) As prescribed by rule or order of the commissioner.

(2) The surety bond shall be in a form satisfactory to the commissioner.

(3) Every bond shall provide for suit on the bond by any person who has a cause of action under this subchapter.

(4) The aggregate liability of the surety shall not exceed the principal sum of the bond.

(5) A surety bond shall cover claims for at least five (5) years after the licensee ceases to provide mortgage services in this state or longer if required by the commissioner.

(g) An applicant filing for licensure as a mortgage banker or mortgage servicer shall file with the commissioner as part of his or her application audited financial statements that reflect that the applicant has a net worth of at least twenty-five thousand dollars (\$25,000) and are:

(1) Prepared by an independent certified public accountant;

(2) Prepared according to:

(A) Generally accepted accounting principles as promulgated by the Financial Accounting Standards Board; or

(B) International financial reporting standards promulgated by the International Financial Reporting Standards Foundation and the International Accounting Standards Board;

(3) Accompanied by an opinion acceptable to the commissioner; and

(4) Dated within fifteen (15) months preceding the date on which the application is filed.

(h) Any general partner, manager of a limited liability company, or officer of a corporation who individually meets the requirements under subsection (b) of this section shall be deemed to have met the qualifications for licensure as a loan officer upon filing a written application

with the commissioner in the form prescribed by the commissioner and payment of the applicable fee.

(i) Each principal place of business and each branch office of a mortgage broker, mortgage banker, or mortgage servicer licensed under this subchapter shall obtain a separate license.

(j) Except as set forth in § 23-39-503(d), each license issued by the commissioner under this subchapter expires at the close of business on December 31 of the calendar year unless the license is:

(1) Previously surrendered by the licensee and the surrender is accepted by the commissioner;

(2) Abandoned by the licensee as provided in § 23-39-506;

(3) Suspended or revoked by the commissioner; or

(4) Terminated if the temporary authority granted to a transitional loan officer has expired due to:

(A) The end of a one hundred twenty (120) day period; or

(B) The individual's having received a loan officer license under this subchapter.

(k) Licenses issued under this subchapter are not transferable.

(1)(1) Control of a licensee shall not be acquired through a stock or equity purchase, transfer of interest, or other device without the prior written consent of the commissioner.

(2) A person seeking to acquire control of a licensee, at least thirty (30) days before the proposed change of control, shall:

(A) Pay the commissioner a fee of one hundred dollars (\$100);

(B) Submit to the commissioner:

(i) The information required under subdivision (a)(4)(D) of this section;

(ii) The proposed transaction documents; and

(iii) Any other information deemed relevant by the commissioner; and

(C) Submit financial statements according to subsection (g) of this section, if a licensee holds a mortgage banker or mortgage servicer license.

(D) [Repealed.]

(3) The commissioner may refuse to give written consent if he or she finds that any of the grounds for denial, revocation, or suspension of a license under § 23-39-514 are applicable to the person seeking to acquire control of a license.

(4)(A) Failure to notify the commissioner at least thirty (30) days before the proposed change of control shall result in a late fee of one hundred dollars (\$100).

(B) All or part of the late fee may be waived by the commissioner for good cause.

(m)(1) An application filed with the commissioner may be withdrawn upon written request of the applicant delivered to the commissioner at any time before the granting of the license.

(2) However, if a notice of intent to deny the application has been sent to the applicant, the applicant shall not withdraw the application except upon the written direction of the commissioner.

(n)(1) Unless a proceeding has been commenced to suspend or revoke the license, a license may be surrendered by a licensee by filing a written request to surrender the license in a form acceptable to the commissioner.

(2) The surrender of the license becomes effective upon acceptance by the commissioner.

(3) Notwithstanding a surrender or termination of a license and acceptance of the surrender or termination by the commissioner, if a licensee or any person acting on behalf of the licensee has knowingly violated any provision of this subchapter or any rule or order promulgated or issued under this subchapter:

(A) A proceeding may be commenced at any time within one (1) year following the effective date of the surrender or termination of the license; and

(B) An order may be entered revoking the license as of a date before the acceptance of the surrender or termination of the license.

(o) To issue a loan officer license, the commissioner shall find that:

(1) The applicant has:

(A) Never had a loan officer license revoked in a governmental jurisdiction;

(B) [Repealed.]

(C) Demonstrated sufficient financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the loan officer will operate honestly, fairly, and efficiently within the purposes of this subchapter; and

(D) Complied with the preclicensing education and testing requirements of subdivision (b)(3) of this section; and

(2) The applicant's employer has met the surety bond requirement of subdivision (f)(1) of this section.

History. Acts 2003, No. 554, § 1; 2005, No. 1679, § 1; 2007, No. 748, § 4; 2009, No. 164, § 10; 2009, No. 731, §§ 7-17; 2011, No. 894, §§ 5-8; 2015, No. 1115, § 29; 2017, No. 669, §§ 1-3; 2019, No. 200, §§ 11-17; 2019, No. 910, § 2348.

Publisher's Notes. This section is being set out to correct a publication error in the 2019 supplement.

Amendments. The 2015 amendment substituted "high school equivalency diploma approved by the Department of Career Education" for "general educational development certificate" in (b)(2)(A).

The 2017 amendment substituted "a managing principal of the applicant" for "any partner, officer, director, any person occupying a similar status or performing similar functions, any managing principal, or any person directly or indirectly

controlling the applicant" at the end of (a)(4)(D)(i); added (a)(4)(D)(ii)(d); substituted "Each" for "In addition to the requirements under subsections (a) and (b) of this section, each" in the introductory language of (c); and rewrote (f).

The 2019 amendment by No. 200 inserted "transitional loan officer" in (a)(1); inserted "rule or" in (a)(2); substituted "copy" for "certified copy" in (a)(4)(B)(i); rewrote (g)(2); added (j)(4); repealed (l)(2)(D) and (o)(1)(B); and made stylistic changes.

The 2019 amendment by No. 910 substituted "Adult Education Section of the Division of Workforce Services" for "Department of Career Education" in (b)(2)(A).

U.S. Code. Section 603(p) of the Fair Credit Reporting Act, referred to in subsection (b) of this section, is codified as 15 U.S.C. § 1681a(p).

SUBTITLE 3. INSURANCE

CHAPTER 79

INSURANCE POLICIES GENERALLY

SUBCHAPTER 2 — SUITS AGAINST INSURERS

23-79-208. Damages and attorney's fees on loss claims.

CASE NOTES

Award Improper.

When an innocent spouse's husband burned down the parties' house and died by suicide inside the house, it was error to award the spouse damages against an insurer who denied the spouse's claim

under the policy's intentional acts exclusion because the spouse was not entitled to judgment against the insurer. *Shelter Mut. Ins. Co. v. Lovelace*, 2020 Ark. 93, 594 S.W.3d 84 (2020).

CHAPTER 85

ACCIDENT AND HEALTH INSURANCE

23-85-114. Payment of claims provision.

CASE NOTES

Applicability.

Automobile insurer's payment of med-pay benefits to a medical center over the insured's objections was upheld where: the policy stated that benefits can be paid "to or for" the insured; sections 23-89-202 and 23-89-204 do not mandate payment only to the insured; section 4-58-102 allows an insured to assign the right to receive insurance proceeds, as the insured

had done in this case, and the insurer was obligated by law to honor the assignment and lien; section 23-85-114(b) does not apply to automobile insurance; and there was no evidence that the insured had advised either the insurer or the medical center of a revocation of the specific assignment of benefits to the medical center. *United Servs. Auto. Ass'n v. Norton*, 2020 Ark. App. 100, 596 S.W.3d 522 (2020).

CHAPTER 88

PROPERTY INSURANCE

SUBCHAPTER 2 — ANTIARSON APPLICATIONS

23-88-201. Purpose.

CASE NOTES

Intentional Acts Exclusion.

Insurance policy's intentional acts exclusion barred an innocent spouse's recovery when the spouse's husband burned

down the parties' house and died by suicide inside the house. While the public policy of arson deterrence may be of limited applicability in these specific circum-

stances—where the insured who engages in the intentional act also dies by suicide—such narrow circumstances do not warrant a conclusion that the application of

an intentional acts exclusion to an innocent insured contravenes public policy. *Shelter Mut. Ins. Co. v. Lovelace*, 2020 Ark. 93, 594 S.W.3d 84 (2020).

CHAPTER 89

CASUALTY INSURANCE

SUBCHAPTER 2 — AUTOMOBILE LIABILITY INSURANCE GENERALLY

23-89-202. Required first party coverage.

CASE NOTES

Benefits.

Circuit court properly granted summary judgment in favor of an insurer on passengers' claim for medical expenses, a statutory penalty, fees, and interest related to an automobile accident; there was no ambiguity in the applicable policy language concerning "discharge" and the insurer discharged the passengers' debts through its payments. The passengers' argument failed that the policy language was against the state's public policy, as reflected in this section; there is nothing in this section that would have permitted the passengers to receive the difference between what the medical providers billed and what they accepted as full satisfaction of the debt. *Crockett v. Shelter Mut. Ins. Co.*, 2019 Ark. 365, 589 S.W.3d 369 (2019).

Automobile insurer's payment of med-pay benefits to a medical center over the insured's objections was upheld where: the policy stated that benefits can be paid "to or for" the insured; sections 23-89-202

and 23-89-204 do not mandate payment only to the insured; section 4-58-102 allows an insured to assign the right to receive insurance proceeds, as the insured had done in this case, and the insurer was obligated by law to honor the assignment and lien; section 23-85-114(b) does not apply to automobile insurance; and there was no evidence that the insured had advised either the insurer or the medical center of a revocation of the specific assignment of benefits to the medical center. *United Servs. Auto. Ass'n v. Norton*, 2020 Ark. App. 100, 596 S.W.3d 522 (2020).

Though the relevant statutes mandate med-pay coverage in automobile liability insurance, they do not specify that the insured is always the sole payee, regardless of circumstances; the court of appeals declined to interpret the statutes to say that the insured and/or insurer may ignore assignments and liens. *United Servs. Auto. Ass'n v. Norton*, 2020 Ark. App. 100, 596 S.W.3d 522 (2020).

23-89-204. Coverage for passengers and persons struck by insured vehicle.

CASE NOTES

Benefits.

Automobile insurer's payment of med-pay benefits to a medical center over the insured's objections was upheld where: the policy stated that benefits can be paid "to or for" the insured; sections 23-89-202 and 23-89-204 do not mandate payment only to the insured; section 4-58-102 allows an insured to assign the right to receive insurance proceeds, as the insured

had done in this case, and the insurer was obligated by law to honor the assignment and lien; section 23-85-114(b) does not apply to automobile insurance; and there was no evidence that the insured had advised either the insurer or the medical center of a revocation of the specific assignment of benefits to the medical center. *United Servs. Auto. Ass'n v. Norton*, 2020 Ark. App. 100, 596 S.W.3d 522 (2020).

23-89-208. Payments.

CASE NOTES

Cited: United Servs. Auto. Ass’n v. Norton, 2020 Ark. App. 100, 596 S.W.3d 522 (2020).

23-89-211. Total loss settlements.

CASE NOTES

Actual Cash Value.

Definitional difference in the term “actual cash value” between the insurance code and regulations and an insurance contract had no meaningful legal difference because the cost of acquiring a com-

parable vehicle in Arkansas necessarily included state sales tax and title fees as part of the payment in a total loss claim. Betts v. USAA Gen. Indem. Co., 2020 Ark. App. 426, 606 S.W.3d 616 (2020).

SUBCHAPTER 4 — UNINSURED MOTORIST COVERAGE

23-89-404. Uninsured motorist property damage coverage.

CASE NOTES

Policy Provisions.

Court of appeals was required to follow clear precedent that public policy is not violated by an insurance policy provision

requiring vehicle contact for uninsured motorist coverage. Konecny v. Federated Rural Elec. Ins. Exch., 2019 Ark. App. 452, 588 S.W.3d 349 (2019).

CHAPTER 101

CREDITOR-PLACED INSURANCE

23-101-103. Definitions.

CASE NOTES

Actual Cash Value.

Definitional difference in the term “actual cash value” between the insurance code and regulations and an insurance contract had no meaningful legal difference because the cost of acquiring a com-

parable vehicle in Arkansas necessarily included state sales tax and title fees as part of the payment in a total loss claim. Betts v. USAA Gen. Indem. Co., 2020 Ark. App. 426, 606 S.W.3d 616 (2020).

SUBTITLE 4. MISCELLANEOUS REGULATED INDUSTRIES

CHAPTER 111

ARKANSAS GREYHOUND RACING LAW

SUBCHAPTER 5 — CONDUCT OF MEETS

23-111-505. Additional racing days for benefit of indigent patients, etc.

A.C.R.C. Notes. Acts 2020, No. 2, § 58, provided: "CREDIT TO THE INDIGENT PATIENTS FUND. All revenue derived from the pari-mutuel tax at the fifteen (15) additional days of racing authorized by subsection (a) of Ark. Code § 23-111-505 after monies have been remitted by the franchise holder to Arkansas State University - Mid-South as may be provided by law, shall be deposited with the Treasurer of State as special revenue for credit to the Indigent Patients Fund, to be used to defray the cost of hospitalization and other medical services of indigent Arkansas patients in health care facilities by Mississippi County, Poinsett County,

Cross County, St. Francis County and Lee County for which the county has not received total reimbursement. Each county shall certify to the Chief Fiscal Officer of the State the amount of the unreimbursed medical expenses under such procedures and such detail as required by the Department of Finance and Administration. The amount available to each county shall be no more than one-fifth (1⁄5) of the total funds available or the amount certified of unreimbursed medical expenses, whichever is less.

"The provisions of this section shall be in effect only from July 1, 2020 through June 30, 2021."

CHAPTER 115

ARKANSAS SCHOLARSHIP LOTTERY ACT

SUBCHAPTER.

7. PROCUREMENTS.

SUBCHAPTER 7 — PROCUREMENTS

SECTION.

23-115-701. Procurements — Major pro-

curement contracts —
Competitive bidding.

Effective Dates. Acts 2020, No. 95, § 41: July 1, 2020, except §§ 37, 38, effective Apr. 20, 2020. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2020 is essential to the operation of the agency for which the appropriations in this Act are provided;

with the exception that Section and Section in this Act shall be in full force and effect from and after the date of its passage and approval, and that in the event of an extension of the Legislative Session, the delay in the effective date of this Act beyond July 1, 2020, with the exception that Section 37 and Section 38 in this Act shall be in full force and effect from and after the date of its passage and approval, could work irreparable harm upon the

proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full

force and effect from and after July 1, 2020; with the exception that Section 37 and Section 38 in this Act shall be in full force and effect from and after the date of its passage and approval.”

23-115-701. Procurements — Major procurement contracts — Competitive bidding.

(a)(1) The Office of the Arkansas Lottery may purchase, lease, or lease-purchase goods or services as necessary for effectuating the purposes of this chapter.

(2) The office may make procurements that integrate functions, including without limitation:

- (A) Lottery design;
- (B) Ticket distribution to retailers;
- (C) Supply of goods and services; and
- (D) Advertising.

(3) In all procurement decisions, the office shall:

(A) Take into account the particularly sensitive nature of lotteries; and

(B) Act to promote and ensure:

(i) Security, honesty, fairness, and integrity in the operation and administration of lotteries; and

(ii) The objectives of raising net proceeds for the benefit of scholarships and grants.

(b) Except as provided in subsections (c) and (d) of this section, the office shall comply with the Arkansas Procurement Law, § 19-11-201 et seq.

(c)(1) The office shall adopt rules concerning the procurement process for major procurement contracts.

(2) The office shall arrange for the solicitation and receipt of competitive bids for major procurement contracts.

(3) Except for printing, stationery, and supplies under Arkansas Constitution, Amendment 54, the office is not required to accept the lowest responsible bid for major procurement contracts but shall select a bid that provides the greatest long-term benefit to the state, the greatest integrity for the office, and the best service and products for the public.

(d) In any bidding process, the office may administer its own bidding and procurement or may utilize the services of the Department of Finance and Administration.

(e)(1) Each proposed major procurement contract and each amendment or modification to a proposed or executed major procurement contract shall be filed with the Legislative Council for review at least thirty (30) days before the execution date of the major procurement

contract or the amendment or modification to a proposed or executed major procurement contract.

(2) The Legislative Council, or if the General Assembly is in session, the Joint Budget Committee, shall provide the office with its review as to the propriety of the major procurement contract and each amendment or modification to a proposed or executed major procurement contract within thirty (30) days after receipt of the proposed major procurement contract or the amendment or modification to a proposed or executed major procurement contract.

History. Acts 2009, No. 605, § 1; 2009, No. 606, § 1; 2009, No. 1405, § 45; 2010, No. 265, § 31; 2010, No. 294, § 31; 2015, No. 218, § 25; 2015, No. 1258, § 35; 2020, No. 95, § 36.

Amendments. The 2020 amendment inserted "or if the General Assembly is in session, the Joint Budget Committee" in (e)(2).

TITLE 24

RETIREMENT AND PENSIONS

CHAPTER.

4. ARKANSAS PUBLIC EMPLOYEES' RETIREMENT SYSTEM.
8. RETIREMENT OF JUDGES AND COURT EMPLOYEES.

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER 1 — GENERAL PROVISIONS

24-1-101. Assets and income for retirement systems.

CASE NOTES

County Employees.

Substantial evidence supported the finding of the Board of Trustees of the Arkansas Public Employees' Retirement System that former employees of nursing homes owned by counties were not "county employees" under the relevant

statutes and were not eligible for membership in the retirement system because their compensation was payable from patient revenues rather than from appropriated funds. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

CHAPTER 4

ARKANSAS PUBLIC EMPLOYEES' RETIREMENT SYSTEM

SUBCHAPTER.

5. CREDITED SERVICE AND ELIGIBILITY FOR BENEFITS.

SUBCHAPTER 1 — GENERAL PROVISIONS**24-4-101. Definitions.****CASE NOTES****County Employees.**

All three definitions (“County employees”, “Employees”, and “Nonstate employees”) in this section had to be applied to determine the county nursing home employees’ eligibility for membership in the Arkansas Public Employees’ Retirement System. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

There is no irreconcilable conflict that compels a disjunctive reading of the language in the introductory paragraph of § 24-4-302 that refers to three definitions in this section; read together, the definitions of “County employees” and “Employees” in this section harmoniously provide that “county employees” means all employees who are paid, either directly or indirectly, from funds appropriated by

county participating public employers. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

Assuming that the nursing-home administrative boards and their respective counties were synonymous under the definitions of “County employees” and “Employees” in this section, the Board of Trustees of the Arkansas Public Employees’ Retirement System’s finding that the former employees of county-owned nursing homes were not paid from appropriated funds as required by the definition of “Employees” in this section was affirmed as no ordinances in the record specifically designated county money for their compensation. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

SUBCHAPTER 3 — MEMBERSHIP**24-4-302. County employees included — Exceptions.****CASE NOTES****Eligibility.**

All three definitions (“County employees”, “Employees”, and “Nonstate employees”) in § 24-4-101 had to be applied to determine the county nursing home employees’ eligibility for membership in the Arkansas Public Employees’ Retirement System. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

There is no irreconcilable conflict that compels a disjunctive reading of the language in the introductory paragraph of this section that refers to three definitions in § 24-4-101 with “and”; read together, the definitions of “County employees” and “Employees” in § 24-4-101 harmoniously provide that “county employees” means all employees who are paid, either directly or indirectly, from funds appropriated by county participating public employers. *Bd. of Trs. of the Ark. Pub. Emples. Ret.*

Sys. v. Garrison, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

Substantial evidence supported the finding of the Board of Trustees of the Arkansas Public Employees’ Retirement System that former employees of nursing homes owned by counties were not “county employees” under the relevant statutes and were not eligible for membership in the retirement system because their compensation was payable from patient revenues rather than from appropriated funds. *Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison*, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

Assuming that the nursing-home administrative boards and their respective counties were synonymous under the definitions of “County employees” and “Employees” in § 24-4-101, the Board of Trustees of the Arkansas Public Employees’ Retirement System’s finding that the former employees of county-owned nursing

homes were not paid from appropriated funds as required by the definition of “Employees” in § 24-4-101 was affirmed as no ordinances in the record specifically

designated county money for their compensation. Bd. of Trs. of the Ark. Pub. Emples. Ret. Sys. v. Garrison, 2019 Ark. App. 245, 576 S.W.3d 485 (2019).

SUBCHAPTER 5 — CREDITED SERVICE AND ELIGIBILITY FOR BENEFITS

SECTION.
24-4-520. Termination required for retirement — Definitions.

Effective Dates. Acts 2021, No. 20, § 2: Feb. 2, 2021. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the current coronavirus 2019 (COVID-19) pandemic has impacted the normal functioning of state government, including the procedures that will be used for the 2021 Regular Session; that the coronavirus 2019 (COVID-19) pandemic has required a change in the procedures usually implemented by the General Assembly during previous legislative sessions; that given the required changes to the normal legislative session procedures, the state government needs to retain experienced personnel in order to properly perform necessary legislative functions

and adequately respond to issues that may arise during the 2021 Regular Session; and that this act is necessary to ensure that the 2021 Regular Session proceeds with minimal interruption or error. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

24-4-520. Termination required for retirement — Definitions.

- (a) Except as provided in subsection (c) of this section, a member of the Arkansas Public Employees’ Retirement System shall terminate covered employment to be eligible for retirement.
- (b)(1) A member shall not be terminated from employment for retirement purposes if the person:

(A)(i) Returns to employment in a position covered under the system within one hundred eighty (180) days of the person’s effective date of retirement.

(ii) Subdivision (b)(1)(A)(i) of this section does not apply to a member of the system who returns to temporary employment with the House of Representatives, the Senate, the Bureau of Legislative Research, Arkansas Legislative Audit, or the Arkansas Code Revision Commission during a regular session, fiscal session, or special session in a session-only position requiring specialized institutional knowledge and experience; or

(B) Is a member with service credit under § 24-4-521 at a rate of two (2) or more years of credited service for each year of actual service

and the person returns to employment in a position covered under the system within one (1) year of the person's effective date of retirement.

(2) A member participating in the Arkansas Public Employees' Retirement System Deferred Retirement Option Plan on January 1, 2009, shall have the one-hundred-eighty-day separation requirement waived and may return to employment otherwise covered by the system no sooner than thirty (30) calendar days from the commencement of his or her retirement.

(3) A member who has retired and commenced receiving benefits in any month between January 2009 and June 2009, inclusive, shall have the one-hundred-eighty-day separation requirement waived and may return to employment otherwise covered by the system no sooner than thirty (30) calendar days from the commencement of his or her retirement.

(c)(1) An elected public official may retire and begin receiving retirement benefits if the elected public official is a member:

(A) Whose current service in public office in one (1) form of government is covered by § 24-4-521(b)(5); and

(B) Who is elected to public office in a different form of government and will begin serving in that public office immediately after the expiration of his or her term of public office described in subdivision (c)(1)(A) of this section.

(2) The member shall notify the retirement system of his or her impending service in another form of government at least thirty (30) days prior to the first day of the month in which that service will begin. A completed retirement application shall be submitted at that time.

(3) As used in this subsection, "form of government" means city government, county government, or state government.

(d) Persons failing to meet termination requirements shall forfeit their benefits until requirements are met.

(e)(1) As used in this section, "terminate" means:

(A) The member's employment has ended;

(B) A complete severance of the employer-employee relationship has occurred; and

(C) The member has ceased performing any services for the employer, except for noncompensated functions related to the transfer of the duties or the transfer of the position itself.

(2) If the member is an elected public official, "terminate" as used in this section means:

(A) The member has resigned, been removed, or otherwise no longer holds the elected position;

(B) A complete severance from the elected position has occurred; and

(C) The member has ceased performing any services in his or her elected position, except for noncompensated functions related to the transfer of the duties or the transfer of the position itself.

(3) As used in this section, "terminate" does not mean:

(A) Taking a leave of absence;

- (B) Performing job duties or services without remuneration; or
- (C) Receiving or accruing additional employment-related compensation, reimbursements, benefits, or other emoluments.

History. Acts 1999, No. 1460, § 1; 2009, No. 657, § 1; 2011, No. 40, § 1; 2001, No. 154, § 1; 2005, No. 652, § 1; 2011, No. 774, § 1; 2021, No. 20, § 1.

CHAPTER 8

RETIREMENT OF JUDGES AND COURT EMPLOYEES

SUBCHAPTER.

4. MUNICIPAL JUDGES AND CLERKS — COUNTIES WITH POPULATION OF 150,000.

SUBCHAPTER 4 — MUNICIPAL JUDGES AND CLERKS — COUNTIES WITH POPULATION OF 150,000

SECTION.

24-8-408. Eligibility for benefits —
Clerks.

24-8-408. Eligibility for benefits — Clerks.

(a)(1) Any clerk of a municipal court to which this subchapter applies, appointed by the judge or judges of the court, shall be eligible to receive retirement benefits provided by this subchapter who:

(A) Attains age sixty (60) and has served in office as clerk for at least ten (10) years;

(B) Attains age sixty-five (65) and has served in office for at least eight (8) years; or

(C) Has served in office for at least twenty (20) years, irrespective of age.

(2) If the clerk resigns, retires from office, or is succeeded in office by another clerk, the clerk shall receive retirement pay for and during the remainder of the person's natural life in an amount equal to one-half (½) of the salary payable to the clerk at the time of resignation, retirement, or succession in office.

(3) The governing body of the municipality or the county may by ordinance provide that after the death of the clerk, the surviving spouse of a qualifying court clerk can continue to receive the retirement benefits under this subchapter until the surviving spouse dies or remarries.

(b)(1) Any clerk of a municipal court who is covered by the provisions of this subchapter and who has seven (7) or more years of service in any position in the office of the county sheriff shall be entitled to have the service in the office of the county sheriff credited as municipal court clerk service.

(2) The service so converted shall be treated the same as if it were service as clerk of a municipal court in the county for purposes of determining eligibility for retirement under the provisions of this subchapter.

History. Acts 1965, No. 19, § 4; 1969, No. 102, § 3; 1975, No. 637, § 1; 1979, No. 155, § 1; 1979, No. 660, § 1; A.S.A. 1947, §§ 22-944, 22-948.1; Acts 2001, No. 1613, § 3; 2019, No. 84, § 7.

Publisher's Notes. This section is being set out to correct a publication error in the 2019 supplement.
Amendments. The 2019 amendment repealed (a)(1)(D).

TITLE 25
STATE GOVERNMENT

- CHAPTER.
- 10. DEPARTMENT OF HUMAN SERVICES.
 - 17. MANAGEMENT OF STATE INSTITUTIONS.
 - 19. FREEDOM OF INFORMATION ACT OF 1967.

CHAPTER 10
DEPARTMENT OF HUMAN SERVICES

- SUBCHAPTER.
- 2. DIVISION OF STATE SERVICES FOR THE BLIND.

SUBCHAPTER 2 — DIVISION OF STATE SERVICES FOR THE BLIND

- SECTION.
- 25-10-201. Public policy.
 - 25-10-207. State Services for the Blind Fund Account.

Effective Dates. Acts 2020, No. 168, § 10: July 1, 2020. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2020 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the legislative session, the delay in the effective date of this Act beyond July 1, 2020 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2020."

25-10-201. Public policy.

(a) It is the public policy of the State of Arkansas to furnish blind and visually handicapped persons those services which are reasonably necessary to allow them the opportunity to lead full, useful, and productive lives and to expend funds available for that purpose in the most efficient and effective manner possible.

(b) The General Assembly finds that this purpose may be best accomplished by the establishment of a Division of State Services for the Blind within the Department of Commerce with the necessary authority to administer the services and programs for the blind and visually impaired.

History. Acts 1983, No. 481, § 1; A.S.A. 1947, § 5-939; Acts 2020, No. 168, § 7. substituted “Department of Commerce” for “Department of Human Services” in (b).
Amendments. The 2020 amendment

25-10-207. State Services for the Blind Fund Account.

Any sums provided by the General Assembly for the purposes of this subchapter shall be kept by the Treasurer of State in a fund to be designated as the “State Services for the Blind Fund Account” and shall be used to carry out the particular purposes assigned to it in this subchapter.

History. Acts 1983, No. 481, § 8; A.S.A. 1947, § 5-946; Acts 1993, No. 403, § 20; 2019, No. 910, § 615. **Amendments.** The 2019 amendment substituted “State Services for the Blind Fund Account” for “State Services for the Blind Fund Account of the Department of Human Services Fund”.
Publisher’s Notes. This section is being set out to reflect a correction to the 2019 supplement pamphlet.

CHAPTER 15
ADMINISTRATIVE PROCEDURES

SUBCHAPTER 2 — ADMINISTRATIVE PROCEDURE ACT

25-15-207. Rules — Actions for declaratory judgments.

CASE NOTES

Applicability. Marijuana cultivation facility applicant’s claim that the Medical Marijuana Commission failed to adopt model rules promulgated by the Attorney General under § 25-15-215, or give a reason for not doing so, was allowed to proceed under this section as it involved the applicability or validity of the Commission’s rules, rather than the Commission’s application of those rules to the applicant. This claim could proceed under the “ultra vires” or “illegal acts” exception to sovereign immunity. Ark. Dep’t of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC, 2020 Ark. 213, 601 S.W.3d 111 (2020).

25-15-210. Administrative adjudication — Decisions.

CASE NOTES

ANALYSIS

Findings and Conclusions.
—Sufficiency.

Findings and Conclusions.

—Sufficiency.

Where an appraiser was sanctioned by the appraiser board for a deficient appraisal, although the findings did not explain precisely how the appraiser could

have remedied the deficiencies in his appraisal, the law does not require this level of specificity; the findings explained the portion of the appraisal that the board deemed deficient, and by reviewing those findings, the court could determine whether the board conformed with the law. *Reynolds v. Ark. Appraiser Licensing & Certification Bd.*, 2019 Ark. App. 587, 591 S.W.3d 837 (2019).

25-15-212. Administrative adjudication — Judicial review.

CASE NOTES

ANALYSIS

Inmates.
Jurisdiction.
Record.
Scope of Review.
—Arbitrary, Capricious, Etc.
—Substantial Evidence.

Inmates.

Judicial review of administrative complaints is generally unavailable to inmates unless a constitutional violation is sufficiently alleged. When an inmate challenges a disciplinary proceeding and prison officials' implementation of Department of Correction policy, the petition must allege a constitutional question sufficient to raise a liberty interest. *Muntaqim v. Kelley*, 2019 Ark. 240, 581 S.W.3d 496 (2019).

Circuit court did not err in denying an inmate's petition to proceed in forma pauperis on his claims that prison officials initiated and conducted a disciplinary proceeding against him in violation of his constitutional rights because the Department of Correction officials did not violate his right to due process as there was no liberty interest protecting against a 20-day assignment to punitive isolation; and the inmate's claim that disciplinary charges were brought against him in retaliation for his exercising his right to seek redress of grievances failed to support his petition because the disciplinary

charges were supported by "some evidence" that the inmate had threatened and acted insolently toward prison officials. *Muntaqim v. Kelley*, 2019 Ark. 240, 581 S.W.3d 496 (2019).

Jurisdiction.

Marijuana cultivation facility applicant could not proceed to the extent its complaint rested on this section as a jurisdictional basis as the Medical Marijuana Commission's decision to disqualify it took place without notice or a hearing, and thus it was not the result of an adjudication. *Ark. Dep't of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC*, 2020 Ark. 213, 601 S.W.3d 111 (2020).

Record.

Where the administrative record was not filed in the circuit court due to an "inadvertent oversight", the administrative record could not be filed directly with the appellate court, bypassing the circuit court, because the "reviewing court" in subdivision (d)(1) of this section was the lower court and not the appellate court. Furthermore, it had been more than 90 days from the service of the petition. *Webb v. Sex Offender Assessment Comm.*, 2020 Ark. App. 30 (2020) (per curiam).

Because the Sex Offender Assessment Committee failed to file the administrative record with the circuit court as was required by subsection (d) of this section, the circuit court's finding of substantial evidence to support appellant's designa-

tion at Level 2 for community-notification purposes could not be reviewed on appeal and had to be reversed. *Webb v. Sex Offender Assessment Comm.*, 2021 Ark. App. 44 (2021).

Scope of Review.

—Arbitrary, Capricious, Etc.

If an agency’s action is supported by substantial evidence, then it follows automatically that the decision cannot be characterized as arbitrary and capricious. *Reynolds v. Ark. Appraiser Licensing & Certification Bd.*, 2019 Ark. App. 587, 591 S.W.3d 837 (2019).

—Substantial Evidence.

Where an appraiser was sanctioned by the appraiser board for a deficient appraisal, the fact that the board’s chief

investigator did not review certain documents until the hearing did not, by itself, render the board’s decision without substantial evidence to support it. *Reynolds v. Ark. Appraiser Licensing & Certification Bd.*, 2019 Ark. App. 587, 591 S.W.3d 837 (2019).

Department of Human Services (DHS) correctly demanded that a nonprofit community organization that participated in the federally funded Child and Adult Care Food Program (CACFP) make a repayment to DHS because substantial evidence supported the finding that the organization was deficient in complying with the program’s requirements. *Kosmic Kidz Outreach, Inc. v. Ark. Dep’t of Human Servs.*, 2020 Ark. App. 567 (2020).

Cited: *Hurd v. Ark. Oil & Gas Comm’n*, 2020 Ark. 210, 601 S.W.3d 100 (2020).

25-15-215. Model rules.

CASE NOTES

Failure to Adopt Model Rules.

Marijuana cultivation facility applicant’s claim that the Medical Marijuana Commission failed to adopt model rules promulgated by the Attorney General under § 25-15-215, or give a reason for not doing so, was allowed to proceed under § 25-15-207, as it involved the applicabil-

ity or validity of the Commission’s rules, rather than the Commission’s application of those rules to the applicant. This claim could proceed under the “ultra vires” or “illegal acts” exception to sovereign immunity. *Ark. Dep’t of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC*, 2020 Ark. 213, 601 S.W.3d 111 (2020).

CHAPTER 17

MANAGEMENT OF STATE INSTITUTIONS

SUBCHAPTER.

2. HONORARY BOARDS AND COMMISSIONS.

SUBCHAPTER 2 — HONORARY BOARDS AND COMMISSIONS

SECTION.

25-17-201. Boards created for manage-

ment of various institu-
tions.

Effective Dates. Acts 2021, No. 18, § 23: Feb. 1, 2021. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Henderson State University is scheduled for reaffirmation of accreditation based on requirements imposed by the regional Higher Learning Commission

and federal regulations; that Henderson State University has already received from the Higher Learning Commission Board of Trustees one (1) extension of accreditation related to its Change of Control application wherein Henderson State University joins the Arkansas State University system; and that this act is imme-

diately necessary because Henderson State University must host a focused visit within a certain timeframe in order to receive reaffirmation of accreditation and become a member institution of the Arkansas State University system. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace,

health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

25-17-201. Boards created for management of various institutions.

The following honorary boards are created:

- (1) A board of five (5) members constituting the Board of Trustees of the Arkansas School for the Blind and the Arkansas School for the Deaf;
- (2) A board of five (5) members constituting the Board of Corrections;
- (3) A board of seven (7) members constituting the Board of Trustees of the University of Central Arkansas, hereby made and constituted a body politic and corporate;
- (4) A board of seven (7) members to be appointed from the state at large, constituting the Board of Trustees of the Arkansas State University System; and
- (5) A board of (5) five members to be appointed from counties in the Second Agricultural and Mechanical District, constituting the Board of Trustees of Arkansas Tech University.

History. Acts 1943, No. 1, § 2; 1953, § 7-201; Acts 1997, No. 948, § 4; 2015, No. 140, § 1; 1963, No. 161, § 4; 1971, No. 9, § 5; 1971, No. 512, §§ 7, 8; A.S.A. 1947, No. 344, § 12; 2021, No. 18, § 21.

CHAPTER 19

FREEDOM OF INFORMATION ACT OF 1967

SECTION.

25-19-106. Open public meetings.

Effective Dates. Acts 2020, No. 2, § 84: July 1, 2020, except §§ 38-43, effective Apr. 16, 2020. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2020 is essential to the operation of the agency for which the appropriations in this Act are provided; with the exception that Sections 38-43 in

this Act shall be in full force and effect from and after the date of its passage and approval, and that in the event of an extension of the Legislative Session, the delay in the effective date of this Act beyond July 1, 2020, with the exception that Sections 38-43 in this Act shall be in full force and effect from and after the date of its passage and approval, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an

emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2020; with the exception that Sections 38-43 in this Act shall be in full force and effect from and after the date of its passage and approval."

Acts 2021, No. 56, § 2: Feb. 2, 2021. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the ability to conduct meetings during a declared disaster emergency may disrupt the safety of in person public meetings; that public participation and access to public meetings during a declared disaster emergency is

critical to protecting the rights of the public; and that this act is immediately necessary because public entities are limited in the manner they can provide public access to public meetings in a safe manner during a declared disaster emergency. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

25-19-105. Examination and copying of public records.

CASE NOTES

ANALYSIS

Construction.
Applicability.

Construction.

Plain reading of subdivision (a)(2)(A) of this section clearly permits a citizen to make three independent types of requests under FOIA, § 25-19-101 et seq.: (1) request the custodian to allow him or her to inspect the public record; (2) request the custodian to allow him or her to copy the public record; or (3) request the custodian to make a copy and give that copy to him or her. *Motal v. City of Little Rock*, 2020 Ark. App. 308, 603 S.W.3d 557 (2020).

Under the plain language of subdivision (a)(2)(A) of this section, a citizen has the right under FOIA, § 25-19-101 et seq., to make a copy of a public record. *Motal v. City of Little Rock*, 2020 Ark. App. 308, 603 S.W.3d 557 (2020).

In keeping with the mandate to interpret FOIA, § 25-19-101 et seq., liberally to accomplish the purpose of promoting free access to public information, the term "copy" should be liberally interpreted to include the taking of a photograph; thus, under FOIA, a citizen has a right to take a photograph of the public document with a cell phone. *Motal v. City of Little Rock*,

2020 Ark. App. 308, 603 S.W.3d 557 (2020).

Subdivision (c)(3)(A) of this section provides that on receiving a request for the examination or copying of personnel or evaluation records, the custodian of the records shall determine within 24 hours of the receipt of the request whether the records are exempt from disclosure and make efforts to the fullest extent possible to notify the person making the request and the subject of the records of that decision. By the plain language of the statute, the evaluation by the custodian required under subdivision (c)(3)(A) is conducted on the receipt of the request and therefor must be conducted before either a custodian makes a copy or allows a citizen to make the copy of the record. *Motal v. City of Little Rock*, 2020 Ark. App. 308, 603 S.W.3d 557 (2020).

Applicability.

Contrary to the district court clerk's contention, the request for all court records of a specific individual was not a request for "compiled information"; the process needed to identify and copy the requested records was not akin to selecting certain information from multiple cases and then aggregating or reformulating that information into a new court

record. Thus, the request was not governed by any of the access limitations described in Ark. Admin. Order No. 19, the Arkansas Freedom of Information Act applied, and while a custodian was not

required to compile information or create a record in response to a FOIA request, that exemption did not apply here. *Jones v. Profl Background Screening Ass'n*, 2020 Ark. 362, 610 S.W.3d 640 (2020).

25-19-106. Open public meetings.

(a) Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts and all boards, bureaus, commissions, or organizations of the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds, shall be public meetings.

(b)(1) The time and place of each regular meeting shall be furnished to anyone who requests the information.

(2) In the event of emergency or special meetings, the person calling the meeting shall notify the representatives of the newspapers, radio stations, and television stations, if any, located in the county in which the meeting is to be held and any news media located elsewhere that cover regular meetings of the governing body and that have requested to be so notified of emergency or special meetings of the time, place, and date of the meeting. Notification shall be made at least two (2) hours before the meeting takes place in order that the public shall have representatives at the meeting.

(c)(1)(A) Except as provided under subdivision (c)(6) of this section, an executive session will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining, or resignation of any public officer or employee.

(B) The specific purpose of the executive session shall be announced in public before going into executive session.

(2)(A) Only the person holding the top administrative position in the public agency, department, or office involved, the immediate supervisor of the employee involved, and the employee may be present at the executive session when so requested by the governing body, board, commission, or other public body holding the executive session.

(B) Any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board, commission, or other public body holding the executive session.

(3) Executive sessions must never be called for the purpose of defeating the reason or the spirit of this chapter.

(4) No resolution, ordinance, rule, contract, regulation, or motion considered or arrived at in executive session will be legal unless, following the executive session, the public body reconvenes in public session and presents and votes on the resolution, ordinance, rule, contract, regulation, or motion.

(5)(A) Boards and commissions of this state may meet in executive session for purposes of preparing examination materials and answers to examination materials that are administered to applicants for licensure from state agencies.

(B) Boards and commissions are excluded from this chapter for the administering of examinations to applicants for licensure.

(6) Subject to the provisions of subdivision (c)(4) of this section, a public agency may meet in executive session for the purpose of considering, evaluating, or discussing matters pertaining to public water system security or municipally owned utility system security as described in § 25-19-105(b)(18).

(7) An executive session held by the Child Maltreatment Investigations Oversight Committee under § 10-3-3201 et seq. is exempt from this section.

(d)(1) All officially scheduled, special, and called open public meetings shall be recorded in a manner that allows for the capture of sound, including without limitation:

(A) A sound-only recording;

(B) A video recording with sound and picture; or

(C) A digital or analog broadcast capable of being recorded.

(2) A recording of an open public meeting shall be maintained by a public entity for a minimum of one (1) year from the date of the open public meeting.

(3) The recording shall be maintained in a format that may be reproduced upon a request under this chapter.

(4) Subdivisions (d)(1) and (2) of this section do not apply to:

(A) Executive sessions; or

(B) Volunteer fire departments.

(5) Cities of the second class and incorporated towns are exempt from subdivisions (d)(1) and (2) of this section until July 1, 2020.

(e)(1) If the Governor declares a disaster emergency under the Arkansas Emergency Services Act of 1973, § 12-75-101 et seq., a public entity may assemble, gather, meet, and conduct an open public meeting through electronic means, including without limitation by:

(A) Telephone;

(B) Video conference; or

(C) Video broadcast.

(2) If an open public meeting is held under subdivision (e)(1) of this section:

(A) The public may attend the open public meeting using electronic means; and

(B) Notice of the method the public may attend the open public meeting shall be published with the notice of the open public meeting.

(3) Physical presence of the public or of an individual member of the public entity at the open public meeting is not required under this subsection.

(4) The open public meeting shall be recorded in the format in which it is conducted, including without limitation:

- (A) A sound-only recording;
- (B) A video recording with sound and picture; or
- (C) A digital or analog broadcast capable of being recorded.

(5) A public entity shall maintain the records of an open public meeting held under this subsection for a minimum of one (1) year from the date of the open public meeting.

History. Acts 1967, No. 93, § 5; 1975 (Extended Sess., 1976), No. 1201, § 1; 1985, No. 843, § 1; A.S.A. 1947, § 12-2805; reen. Acts 1987, No. 1001, § 1; 1999, No. 1589, § 1; 2001, No. 1259, § 2; 2003, No. 763, § 3; 2005, No. 259, § 3; 2007, No. 268, § 3; 2007, No. 998, § 3; 2009, No. 631, § 3; 2011, No. 99, § 3; 2013, No. 235, § 3; 2015, No. 186, § 4; 2017, No. 713, § 11; 2019, No. 1028, § 1; 2020, No. 2, § 42; 2021, No. 56, § 1.

A.C.R.C. Notes. Acts 2020, No. 2, § 43, provided: "TEMPORARY LANGUAGE AND SUSPENSION OF CURRENT LAW.

"(a) Section 42 of this act is cumulative of existing laws and suspends, but does not repeal, any law in conflict with Section 74 of this act.

"(b)(1) Except as provided in subdivision (b)(2) of this section, Section 42 of this act is temporary and expires on the date that the Governor determines that the emergency under Arkansas Code §§ 12-75-101 et seq. and § 20-7-110 in response to an outbreak of coronavirus disease 2019 (COVID-19) has ended.

"(2) If the Governor has not determined by December 31, 2020, that the emergency under Arkansas Code §§ 12-75-101 et seq. and § 20-7-110 in response to an outbreak of coronavirus disease 2019 (COVID-19) has ended, Section 42 of this act shall expire on December 31, 2020.

"(c) On the expiration of Section 42, the provisions of law suspended by Section 42 of this act are in full force and effect.

"(d) The expiration of Section 42 of this act does not affect rights acquired under this act or affect suits then pending."

Amendments. The 2015 amendment inserted "or municipally owned utility system security" in (c)(6).

The 2017 amendment redesignated (c)(1) as (c)(1)(A) and (B); substituted "Except as provided under subdivision (c)(6) of this section, an executive session" for "Executive sessions" in (c)(1)(A); and added (c)(7).

The 2019 amendment added (d).

The 2020 temporary amendment added (e).

CHAPTER 43

CABINET-LEVEL DEPARTMENTS OF THE EXECUTIVE BRANCH

SUBCHAPTER 2 — DEPARTMENT OF AGRICULTURE

A.C.R.C. Notes. Acts 2020, No. 177, § 40, provided: "SHARED SERVICES.

"(a)(1)(A) The Chief Fiscal Officer of the State may create paying accounts on his or her books and on the books of the Treasurer of the State and Auditor of State for the payment of all personal services and operating expenses of the Department of Agriculture.

"(B) Upon prior approval of the Arkansas Legislative Council, or if meeting in Legislative Session the Joint Budget Committee, the Chief Fiscal Officer of the state shall direct the transfer of funds and appropriations to the Shared Services Pay-

ing Account appropriation section of this act and the transfer of positions to the Regular Salaries — Shared Services appropriation section of this act on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State. (2) The transfer authority provided in subdivision (a)(1) of this section for efficiencies and to eliminate duplication of services are limited only to those services that are provided for multiple divisions of a department, including without limitation to administration, human resources, procurement, communications, fleet operations, and information services.

“(2) The transfer authority provided to the department in subdivision (a)(1) of this section may be used to make transfers only within the department’s appropriation act or between other appropriation acts authorized for the department.

“(b)(1) Each department utilizing the Shared Services Paying Account section or Regular Salaries — Shared Services section of this act shall submit a report to be included in the Budget Manuals for hearings, conducted by the General Assembly, listing all shared services transfers of positions, funds, and appropriation under this section, which shall be submitted as instructed by the Department of Finance and Administration — Office of Budget for uniformity.

“(3) A report submitted under subdivision (b)(1) of this section shall include the following:

“(A) The position number, authorized position title, class code, grade, business area, and name of the division, section, or unit for the position being transferred to the Regular Salaries — Shared Services section of this act; and

“(B) The fund center, appropriation, appropriation amount, commitment item or items, business area, and name of the division, section, or unit for the fund or appropriation being transferred to the Shared Services Paying Account.

“(c)(1) It is the intent of the Ninety-Second General Assembly that the authority under this section to transfer positions is intended for use for the time period prior to Fiscal Year 2022 to allow cabinet-level departments to establish a centralized Regular Salaries — Shared Services section, with the recommendation that the position transfer authority granted under this section be discontinued after that time.

“(2) The Bureau of Legislative Research shall bring the recommendation in subdivision (c)(1) of this section to the attention of the chairs conducting the 2021 Regular Session pre-session budget hearings, the chairs of the Special Language Subcommittee, and the members of the Special Language Subcommittee during pre-session budget hearings.

“(d) Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a cabinet-level department each fiscal year is the prerogative of the General Assembly and is usually accomplished by delineating the maximums in the appropriation act or acts and establishing authorized positions and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law. Further, the General Assembly has determined that the cabinet-level departments created under Acts 2019, No. 910, may operate more efficiently if some flexibility is provided as authorized under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“(e) The provisions of this section shall be in effect from the date of passage through June 30, 2021.”

SUBCHAPTER 3 — DEPARTMENT OF COMMERCE

A.C.R.C. Notes. Acts 2020, No. 180, § 53, provided: “SHARED SERVICES.

“(a)(1)(A) The Chief Fiscal Officer of the State may create paying accounts on his or her books and on the books of the Treasurer of State and the Auditor of State for the payment of personal services and operating expenses by the Department of Commerce.

“(B) Upon prior approval of the Arkansas Legislative Council, or if meeting in Legislative Session the Joint Budget Committee, the Chief Fiscal Officer of the State shall direct the transfer of funds and appropriations to the Shared Services Paying Account appropriation section of this act and the transfer of positions to the Regular Salaries — Shared Services ap-

appropriation section of this act on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

“(2) The transfer authority provided in subdivision (a)(1) of this section for efficiencies and to eliminate duplication of services are limited only to those services that are provided for multiple divisions of a department, including without limitation to administration, human resources, procurement, communications, fleet operations, and information services.

“(3) The transfer authority provided to the department in subdivision (a)(1) of this section may be used to make transfers only within the department’s appropriation act or between other appropriation acts authorized for the department.

“(b)(1) Each department utilizing the Shared Services Paying Account section or Regular Salaries — Shared Services section of this act shall submit a report to be included in the Budget Manuals for hearings, conducted by the General Assembly, listing all shared services transfers of positions, funds, and appropriation under this section, which shall be submitted as instructed by the Department of Finance and Administration — Office of Budget for uniformity.

“(2) A report submitted under subdivision (b)(1) of this section shall include the following:

“(A) The position number, authorized position title, class code, grade, business area, and name of the division, section, or unit for the position being transferred to the Regular Salaries — Shared Services section of this act; and

“(B) The fund center, appropriation, appropriation amount, commitment item or items, business area, and name of the division, section, or unit for the fund or appropriation being transferred to the Shared Services Paying Account.

“(c)(1) It is the intent of the Ninety-Second General Assembly that the authority under this section to transfer positions is intended for use for the time period

prior to Fiscal Year 2022 to allow cabinet-level departments to establish a centralized Regular Salaries — Shared Services section, with the recommendation that the position transfer authority granted under this section be discontinued after that time.

“(2) The Bureau of Legislative Research shall bring the recommendation in subdivision (c)(1) of this section to the attention of the chairs conducting the 2021 Regular Session pre-session budget hearings, the chairs of the Special Language Subcommittee, and the members of the Special Language Subcommittee during pre-session budget hearings.

“(d) Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a cabinet-level department each fiscal year is the prerogative of the General Assembly and is usually accomplished by delineating the maximums in the appropriation act or acts and establishing authorized positions and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law. Further, the General Assembly has determined that the cabinet-level departments created under Acts 2019, No. 910, may operate more efficiently if some flexibility is provided as authorized under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“(e) The provisions of this section shall be in effect from the date of passage through June 30, 2021.”

SUBCHAPTER 4 — DEPARTMENT OF CORRECTIONS

A.C.R.C. Notes. Acts 2020, No. 83, § 47, provided: “SHARED SERVICES.

“(a)(1)(A) The Chief Fiscal Officer of the State may create paying accounts on his

or her books and on the books of the Treasurer of State and the Auditor of State for the payment of personal services and operating expenses by the Department of Corrections — Division of Correction.

“(B) Upon prior approval of the Arkansas Legislative Council, or if meeting in Legislative Session the Joint Budget Committee, the Chief Fiscal Officer of the State shall direct the transfer of funds and appropriations to the Shared Services Paying Account appropriation section of this act and the transfer of positions to the Regular Salaries — Shared Services appropriation section of this act on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

“(2) The transfer authority provided in subdivision (a)(1) of this section for efficiencies and to eliminate duplication of services are limited only to those services that are provided for multiple divisions of a department, including without limitation to administration, human resources, procurement, communications, fleet operations, and information services.

“(3) The transfer authority provided to the department in subdivision (a)(1) of this section may be used to make transfers only within the department's appropriation act or between other appropriation acts authorized for the department.

“(b)(1) Each department utilizing the Shared Services Paying Account section or Regular Salaries — Shared Services section of this act shall submit a report to be included in the Budget Manuals for hearings, conducted by the General Assembly, listing all shared services transfers of positions, funds, and appropriation under this section, which shall be submitted as instructed by the Department of Finance and Administration — Office of Budget for uniformity.

“(2) A report submitted under subdivision (b)(1) of this section shall include the following:

“(A) The position number, authorized position title, class code, grade, business area, and name of the division, section, or unit for the position being transferred to the Regular Salaries — Shared Services section of this act; and

“(B) The fund center, appropriation, appropriation amount, commitment item or items, business area, and name of the

division, section, or unit for the fund or appropriation being transferred to the Shared Services Paying Account.

“(c)(1) It is the intent of the Ninety-Second General Assembly that the authority under this section to transfer positions is intended for use for the time period prior to Fiscal Year 2022 to allow cabinet-level departments to establish a centralized Regular Salaries — Shared Services section, with the recommendation that the position transfer authority granted under this section be discontinued after that time.

“(2) The Bureau of Legislative Research shall bring the recommendation in subdivision (c)(1) of this section to the attention of the chairs conducting the 2021 Regular Session pre-session budget hearings, the chairs of the Special Language Subcommittee, and the members of the Special Language Subcommittee during pre-session budget hearings.

“(d) Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a cabinet-level department each fiscal year is the prerogative of the General Assembly and is usually accomplished by delineating the maximums in the appropriation act or acts and establishing authorized positions and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law. Further, the General Assembly has determined that the cabinet-level departments created under Acts 2019, No. 910, may operate more efficiently if some flexibility is provided as authorized under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“(e) The provisions of this section shall be in effect from the date of passage through June 30, 2021.”

SUBCHAPTER 5 — DEPARTMENT OF EDUCATION

A.C.R.C. Notes. Acts 2020, No. 153, § 28, provided: “SHARED SERVICES.

“(a)(1)(A) The Chief Fiscal Officer of the State may create paying accounts on his or her books and on the books of the Treasurer of State and the Auditor of State for the payment of personal services and operating expenses by the Department of Education.

“(B) Upon prior approval of the Arkansas Legislative Council, or if meeting in Legislative Session the Joint Budget Committee, the Chief Fiscal Officer of the State shall direct the transfer of funds and appropriations to the Shared Services Paying Account appropriation section of this act and the transfer of positions to the Regular Salaries — Shared Services appropriation section of this act on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

“(2) The transfer authority provided in subdivision (a)(1) of this section for efficiencies and to eliminate duplication of services are limited only to those services that are provided for multiple divisions of a department, including without limitation to administration, human resources, procurement, communications, fleet operations, and information services.

“(3) The transfer authority provided to the department in subdivision (a)(1) of this section may be used to make transfers only within the department’s appropriation act or between other appropriation acts authorized for the department.

“(b)(1) Each department utilizing the Shared Services Paying Account section or Regular Salaries — Shared Services section of this act shall submit a report to be included in the Budget Manuals for hearings, conducted by the General Assembly, listing all shared services transfers of positions, funds, and appropriation under this section, which shall be submitted as instructed by the Department of Finance and Administration — Office of Budget for uniformity.

“(2) A report submitted under subdivision (b)(1) of this section shall include the following:

“(A) The position number, authorized position title, class code, grade, business

area, and name of the division, section, or unit for the position being transferred to the Regular Salaries — Shared Services section of this act; and

“(B) The fund center, appropriation, appropriation amount, commitment item or items, business area, and name of the division, section, or unit for the fund or appropriation being transferred to the Shared Services Paying Account.

“(c)(1) It is the intent of the Ninety-Second General Assembly that the authority under this section to transfer positions is intended for use for the time period prior to Fiscal Year 2022 to allow cabinet-level departments to establish a centralized Regular Salaries — Shared Services section, with the recommendation that the position transfer authority granted under this section be discontinued after that time.

“(2) The Bureau of Legislative Research shall bring the recommendation in subdivision (c)(1) of this section to the attention of the chairs conducting the 2021 Regular Session pre-session budget hearings, the chairs of the Special Language Subcommittee, and the members of the Special Language Subcommittee during pre-session budget hearings.

“(d) Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a cabinet-level department each fiscal year is the prerogative of the General Assembly and is usually accomplished by delineating the maximums in the appropriation act or acts and establishing authorized positions and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law. Further, the General Assembly has determined that the cabinet-level departments created under Acts 2019, No. 910, may operate more efficiently if some flexibility is provided as authorized under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, as provided by this

section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a

court of competent jurisdiction, this entire section is void.

"(e) The provisions of this section shall be in effect from the date of passage through June 30, 2021."

SUBCHAPTER 6 — DEPARTMENT OF ENERGY AND ENVIRONMENT

A.C.R.C. Notes. Acts 2020, No. 89, § 51, provided: "LOAN. Notwithstanding the provisions of Arkansas Code Annotated § 19-5-501(b)(1)(C)(ii) and (D)(i), immediately upon the effective date of this act, the director of the Arkansas Department of Environmental Quality is authorized to request the Chief Fiscal Officer of the State to make a loan on his or her books in the amount not to exceed ten million dollars (\$10,000,000) from the Budget Stabilization Trust Fund to the Hazardous Substance Remedial Action Trust Fund. Loan repayments shall be made from time to time from any legal fund of the Arkansas Department of Environmental Quality and the entire amount of the loan shall be repaid to the Budget Stabilization Trust Fund by June 30, 2023.

"By October 15, January 15, April 15, and July 15 of each fiscal year the Arkansas Department of Environmental Quality shall report to Arkansas Legislative Council or Joint Budget Committee the status of hazardous waste cleanup efforts at the Trafalgar Road site in Bella Vista, Arkansas. The report shall include:

"(a) all funds expended by each quarter of the fiscal year

"(b) source of funds expended

"(c) estimated total of funds to be expended

"(d) expected date for completion of cleanup

"(e) all efforts of cost recovery from responsible parties."

Acts 2020, No. 89, § 52, provided: "SHARED SERVICES.

"(a)(1)(A) The Chief Fiscal Officer of the State may create paying accounts on his or her books and on the books of the Treasurer of State and the Auditor of State for the payment of personal services and operating expenses by the Department of Energy and Environment.

"(B) Upon prior approval of the Arkansas Legislative Council, or if meeting in Legislative Session the Joint Budget Committee, the Chief Fiscal Officer of the State shall direct the transfer of funds and appropriations to the Shared Services Paying Account appropriation section of this act and the transfer of positions to the Regular Salaries — Shared Services appropriation section of this act on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

"(2) The transfer authority provided in subdivision (a)(1) of this section for efficiencies and to eliminate duplication of services are limited only to those services that are provided for multiple divisions of a department, including without limitation to administration, human resources, procurement, communications, fleet operations, and information services.

"(3) The transfer authority provided to the department in subdivision (a)(1) of this section may be used to make transfers only within the department's appropriation act or between other appropriation acts authorized for the department.

"(b)(1) Each department utilizing the Shared Services Paying Account section or Regular Salaries — Shared Services section of this act shall submit a report to be included in the Budget Manuals for hearings, conducted by the General Assembly, listing all shared services transfers of positions, funds, and appropriation under this section, which shall be submitted as instructed by the Department of Finance and Administration — Office of Budget for uniformity.

"(2) A report submitted under subdivision (b)(1) of this section shall include the following:

"(A) The position number, authorized position title, class code, grade, business area, and name of the division, section, or

unit for the position being transferred to the Regular Salaries — Shared Services section of this act; and

“(B) The fund center, appropriation, appropriation amount, commitment item or items, business area, and name of the division, section, or unit for the fund or appropriation being transferred to the Shared Services Paying Account.

“(c)(1) It is the intent of the Ninety-Second General Assembly that the authority under this section to transfer positions is intended for use for the time period prior to Fiscal Year 2022 to allow cabinet-level departments to establish a centralized Regular Salaries — Shared Services section, with the recommendation that the position transfer authority granted under this section be discontinued after that time.

“(2) The Bureau of Legislative Research shall bring the recommendation in subdivision (c)(1) of this section to the attention of the chairs conducting the 2021 Regular Session pre-session budget hearings, the chairs of the Special Language Subcommittee, and the members of the Special Language Subcommittee during pre-session budget hearings.

“(d) Determining the maximum number of employees and the maximum

amount of appropriation and general revenue funding for a cabinet-level department each fiscal year is the prerogative of the General Assembly and is usually accomplished by delineating the maximums in the appropriation act or acts and establishing authorized positions and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law. Further, the General Assembly has determined that the cabinet-level departments created under Acts 2019, No. 910, may operate more efficiently if some flexibility is provided as authorized under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“(e) The provisions of this section shall be in effect from the date of passage through June 30, 2021.”

SUBCHAPTER 7 — DEPARTMENT OF FINANCE AND ADMINISTRATION

A.C.R.C. Notes. Acts 2020, No. 95, § 30, provided: “SHARED SERVICES.

“(a)(1)(A) The Chief Fiscal Officer of the State may create paying accounts on his or her books and on the books of the Treasurer of State and the Auditor of State for the payment of personal services and operating expenses by the Department of Finance and Administration.

“(B) Upon prior approval of the Arkansas Legislative Council, or if meeting in Legislative Session the Joint Budget Committee, the Chief Fiscal Officer of the State shall direct the transfer of funds and appropriations to the Shared Services Paying Account appropriation section of this act and the transfer of positions to the Regular Salaries — Shared Services appropriation section of this act on the books of the Treasurer of State, the Auditor of

State, and the Chief Fiscal Officer of the State.

“(2) The transfer authority provided in subdivision (a)(1) of this section for efficiencies and to eliminate duplication of services are limited only to those services that are provided for multiple divisions of a department, including without limitation to administration, human resources, procurement, communications, fleet operations, and information services.

“(3) The transfer authority provided to the department in subdivision (a)(1) of this section may be used to make transfers only within the department’s appropriation act or between other appropriation acts authorized for the department.

“(b)(1) Each department utilizing the Shared Services Paying Account section or Regular Salaries — Shared Services section of this act shall submit a report to be

included in the Budget Manuals for hearings, conducted by the General Assembly, listing all shared services transfers of positions, funds, and appropriation under this section, which shall be submitted as instructed by the Department of Finance and Administration — Office of Budget for uniformity.

“(2) A report submitted under subdivision (b)(1) of this section shall include the following:

“(A) The position number, authorized position title, class code, grade, business area, and name of the division, section, or unit for the position being transferred to the Regular Salaries — Shared Services section of this act; and

“(B) The fund center, appropriation, appropriation amount, commitment item or items, business area, and name of the division, section, or unit for the fund or appropriation being transferred to the Shared Services Paying Account.

“(c)(1) It is the intent of the Ninety-Second General Assembly that the authority under this section to transfer positions is intended for use for the time period prior to Fiscal Year 2022 to allow cabinet-level departments to establish a centralized Regular Salaries — Shared Services section, with the recommendation that the position transfer authority granted under this section be discontinued after that time.

“(2) The Bureau of Legislative Research shall bring the recommendation in subdivision (c)(1) of this section to the attention of the chairs conducting the

2021 Regular Session pre-session budget hearings, the chairs of the Special Language Subcommittee, and the members of the Special Language Subcommittee during pre-session budget hearings.

“(d) Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a cabinet-level department each fiscal year is the prerogative of the General Assembly and is usually accomplished by delineating the maximums in the appropriation act or acts and establishing authorized positions and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law. Further, the General Assembly has determined that the cabinet-level departments created under Acts 2019, No. 910, may operate more efficiently if some flexibility is provided as authorized under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“(e) The provisions of this section shall be in effect from the date of passage through June 30, 2021.”

SUBCHAPTER 8 — DEPARTMENT OF HEALTH

A.C.R.C. Notes. Acts 2020, No. 96, § 22, provided: “SHARED SERVICES.

“(a)(1)(A) The Chief Fiscal Officer of the State may create paying accounts on his or her books and on the books of the Treasurer of State and the Auditor of State for the payment of personal services and operating expenses by the Department of Health.

“(B) Upon prior approval of the Arkansas Legislative Council, or if meeting in Legislative Session the Joint Budget Committee, the Chief Fiscal Officer of the State shall direct the transfer of funds and

appropriations to the Shared Services Paying Account appropriation section of this act and the transfer of positions to the Regular Salaries — Shared Services appropriation section of this act on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

“(2) The transfer authority provided in subdivision (a)(1) of this section for efficiencies and to eliminate duplication of services are limited only to those services that are provided for multiple divisions of a department, including without limita-

tion to administration, human resources, procurement, communications, fleet operations, and information services.

“(3) The transfer authority provided to the department in subdivision (a)(1) of this section may be used to make transfers only within the department’s appropriation act or between other appropriation acts authorized for the department.

“(b)(1) Each department utilizing the Shared Services Paying Account section or Regular Salaries — Shared Services section of this act shall submit a report to be included in the Budget Manuals for hearings, conducted by the General Assembly, listing all shared services transfers of positions, funds, and appropriation under this section, which shall be submitted as instructed by the Department of Finance and Administration — Office of Budget for uniformity.

“(2) A report submitted under subdivision (b)(1) of this section shall include the following:

“(A) The position number, authorized position title, class code, grade, business area, and name of the division, section, or unit for the position being transferred to the Regular Salaries — Shared Services section of this act; and

“(B) The fund center, appropriation, appropriation amount, commitment item or items, business area, and name of the division, section, or unit for the fund or appropriation being transferred to the Shared Services Paying Account.

“(c)(1) It is the intent of the Ninety-Second General Assembly that the authority under this section to transfer positions is intended for use for the time period prior to Fiscal Year 2022 to allow cabinet-level departments to establish a centralized Regular Salaries — Shared Services section, with the recommendation that the position transfer authority granted

under this section be discontinued after that time.

“(2) The Bureau of Legislative Research shall bring the recommendation in subdivision (c)(1) of this section to the attention of the chairs conducting the 2021 Regular Session pre-session budget hearings, the chairs of the Special Language Subcommittee, and the members of the Special Language Subcommittee during pre-session budget hearings.

“(d) Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a cabinet-level department each fiscal year is the prerogative of the General Assembly and is usually accomplished by delineating the maximums in the appropriation act or acts and establishing authorized positions and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law. Further, the General Assembly has determined that the cabinet-level departments created under Acts 2019, No. 910, may operate more efficiently if some flexibility is provided as authorized under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“(e) The provisions of this section shall be in effect from the date of passage through June 30, 2021.”

SUBCHAPTER 10 — DEPARTMENT OF INSPECTOR GENERAL

A.C.R.C. Notes. Acts 2020, No. 155, § 19, provided: “SHARED SERVICES.

“(a)(1)(A) The Chief Fiscal Officer of the State may create paying accounts on his or her books and on the books of the Treasurer of State and the Auditor of State for the payment of personal services

and operating expenses by the Department of the Inspector General.

“(B) Upon prior approval of the Arkansas Legislative Council, or if meeting in Legislative Session the Joint Budget Committee, the Chief Fiscal Officer of the State shall direct the transfer of funds and

appropriations to the Shared Services Paying Account appropriation section of this act and the transfer of positions to the Regular Salaries — Shared Services appropriation section of this act on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

“(2) The transfer authority provided in subdivision (a)(1) of this section for efficiencies and to eliminate duplication of services are limited only to those services that are provided for multiple divisions of a department, including without limitation to administration, human resources, procurement, communications, fleet operations, and information services.

“(3) The transfer authority provided to the department in subdivision (a)(1) of this section may be used to make transfers only within the department’s appropriation act or between other appropriation acts authorized for the department.

“(b)(1) Each department utilizing the Shared Services Paying Account section or Regular Salaries — Shared Services section of this act shall submit a report to be included in the Budget Manuals for hearings, conducted by the General Assembly, listing all shared services transfers of positions, funds, and appropriation under this section, which shall be submitted as instructed by the Department of Finance and Administration — Office of Budget for uniformity.

“(2) A report submitted under subdivision (b)(1) of this section shall include the following:

“(A) The position number, authorized position title, class code, grade, business area, and name of the division, section, or unit for the position being transferred to the Regular Salaries — Shared Services section of this act; and

“(B) The fund center, appropriation, appropriation amount, commitment item or items, business area, and name of the division, section, or unit for the fund or appropriation being transferred to the Shared Services Paying Account.

“(c)(1) It is the intent of the Ninety-Second General Assembly that the author-

ity under this section to transfer positions is intended for use for the time period prior to Fiscal Year 2022 to allow cabinet-level departments to establish a centralized Regular Salaries — Shared Services section, with the recommendation that the position transfer authority granted under this section be discontinued after that time.

“(2) The Bureau of Legislative Research shall bring the recommendation in subdivision (c)(1) of this section to the attention of the chairs conducting the 2021 Regular Session pre-session budget hearings, the chairs of the Special Language Subcommittee, and the members of the Special Language Subcommittee during pre-session budget hearings.

“(d) Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a cabinet-level department each fiscal year is the prerogative of the General Assembly and is usually accomplished by delineating the maximums in the appropriation act or acts and establishing authorized positions and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law. Further, the General Assembly has determined that the cabinet-level departments created under Acts 2019, No. 910, may operate more efficiently if some flexibility is provided as authorized under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“(e) The provisions of this section shall be in effect from the date of passage through June 30, 2021.”

SUBCHAPTER 11 — DEPARTMENT OF LABOR AND LICENSING

A.C.R.C. Notes. Acts 2020, No. 77, § 11, provided: "SHARED SERVICES.

"(a)(1)(A) The Chief Fiscal Officer of the State may create paying accounts on his or her books and on the books of the Treasurer of State and the Auditor of State for the payment of personal services and operating expenses by the Department of Labor and Licensing.

"(B) Upon prior approval of the Arkansas Legislative Council, or if meeting in Legislative Session the Joint Budget Committee, the Chief Fiscal Officer of the State shall direct the transfer of funds and appropriations to the Shared Services Paying Account appropriation section of this act and the transfer of positions to the Regular Salaries — Shared Services appropriation section of this act on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

"(2) The transfer authority provided in subdivision (a)(1) of this section for efficiencies and to eliminate duplication of services are limited only to those services that are provided for multiple divisions of a department, including without limitation to administration, human resources, procurement, communications, fleet operations, and information services.

"(3) The transfer authority provided to the department in subdivision (a)(1) of this section may be used to make transfers only within the department's appropriation act or between other appropriation acts authorized for the department.

"(b)(1) Each department utilizing the Shared Services Paying Account section or Regular Salaries — Shared Services section of this act shall submit a report to be included in the Budget Manuals for hearings, conducted by the General Assembly, listing all shared services transfers of positions, funds, and appropriation under this section, which shall be submitted as instructed by the Department of Finance and Administration — Office of Budget for uniformity.

"(2) A report submitted under subdivision (b)(1) of this section shall include the following:

"(A) The position number, authorized position title, class code, grade, business

area, and name of the division, section, or unit for the position being transferred to the Regular Salaries — Shared Services section of this act; and

"(B) The fund center, appropriation, appropriation amount, commitment item or items, business area, and name of the division, section, or unit for the fund or appropriation being transferred to the Shared Services Paying Account.

"(c)(1) It is the intent of the Ninety-Second General Assembly that the authority under this section to transfer positions is intended for use for the time period prior to Fiscal Year 2022 to allow cabinet-level departments to establish a centralized Regular Salaries — Shared Services section, with the recommendation that the position transfer authority granted under this section be discontinued after that time.

"(2) The Bureau of Legislative Research shall bring the recommendation in subdivision (c)(1) of this section to the attention of the chairs conducting the 2021 Regular Session pre-session budget hearings, the chairs of the Special Language Subcommittee, and the members of the Special Language Subcommittee during pre-session budget hearings.

"(d) Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a cabinet-level department each fiscal year is the prerogative of the General Assembly and is usually accomplished by delineating the maximums in the appropriation act or acts and establishing authorized positions and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law. Further, the General Assembly has determined that the cabinet-level departments created under Acts 2019, No. 910, may operate more efficiently if some flexibility is provided as authorized under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, as provided by this

section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a

court of competent jurisdiction, this entire section is void.

“(e) The provisions of this section shall be in effect from the date of passage through June 30, 2021.”

SUBCHAPTER 13 — DEPARTMENT OF PARKS, HERITAGE, AND TOURISM

A.C.R.C. Notes. Acts 2020, No. 18, § 31, provided: “SHARED SERVICES.

“(a)(1)(A) The Chief Fiscal Officer of the State may create paying accounts on his or her books and on the books of the Treasurer of State and the Auditor of State for the payment of personal services and operating expenses by the Department of Parks, Heritage, and Tourism.

“(B) Upon prior approval of the Arkansas Legislative Council, or if meeting in Legislative Session the Joint Budget Committee, the Chief Fiscal Officer of the State shall direct the transfer of funds and appropriations to the Shared Services Paying Account appropriation section of this act and the transfer of positions to the Regular Salaries — Shared Services appropriation section of this act on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

“(2) The transfer authority provided in subdivision (a)(1) of this section for efficiencies and to eliminate duplication of services are limited only to those services that are provided for multiple divisions of a department, including without limitation to administration, human resources, procurement, communications, fleet operations, and information services.

“(3) The transfer authority provided to the department in subdivision (a)(1) of this section may be used to make transfers only within the department’s appropriation act or between other appropriation acts authorized for the department.

“(b)(1) Each department utilizing the Shared Services Paying Account section or Regular Salaries — Shared Services section of this act shall submit a report to be included in the Budget Manuals for hearings, conducted by the General Assembly, listing all shared services transfers of positions, funds, and appropriation under this section, which shall be submitted as

instructed by the Department of Finance and Administration — Office of Budget for uniformity.

“(2) A report submitted under subdivision (b)(1) of this section shall include the following:

“(A) The position number, authorized position title, class code, grade, business area, and name of the division, section, or unit for the position being transferred to the Regular Salaries — Shared Services section of this act; and

“(B) The fund center, appropriation, appropriation amount, commitment item or items, business area, and name of the division, section, or unit for the fund or appropriation being transferred to the Shared Services Paying Account.

“(c)(1) It is the intent of the Ninety-Second General Assembly that the authority under this section to transfer positions is intended for use for the time period prior to Fiscal Year 2022 to allow cabinet-level departments to establish a centralized Regular Salaries — Shared Services section, with the recommendation that the position transfer authority granted under this section be discontinued after that time.

“(2) The Bureau of Legislative Research shall bring the recommendation in subdivision (c)(1) of this section to the attention of the chairs conducting the 2021 Regular Session pre-session budget hearings, the chairs of the Special Language Subcommittee, and the members of the Special Language Subcommittee during pre-session budget hearings.

“(d) Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a cabinet-level department each fiscal year is the prerogative of the General Assembly and is usually accomplished by delineating the maximums in the appropriation act or acts and estab-

lishing authorized positions and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law. Further, the General Assembly has determined that the cabinet-level departments created under Acts 2019, No. 910, may operate more efficiently if some flexibility is provided as authorized under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or, if the

General Assembly is in session, the Joint Budget Committee, as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“(e) The provisions of this section shall be in effect from the date of passage through June 30, 2021.”

SUBCHAPTER 14 — DEPARTMENT OF PUBLIC SAFETY

A.C.R.C. Notes. Acts 2020, No. 97, § 45, provided: “SHARED SERVICES.

“(a)(1)(A) The Chief Fiscal Officer of the State may create paying accounts on his or her books and on the books of the Treasurer of State and the Auditor of State for the payment of personal services and operating expenses by the Department of Public Safety.

“(B) Upon prior approval of the Arkansas Legislative Council, or if meeting in Legislative Session the Joint Budget Committee, the Chief Fiscal Officer of the State shall direct the transfer of funds and appropriations to the Shared Services Paying Account appropriation section of this act and the transfer of positions to the Regular Salaries — Shared Services appropriation section of this act on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

“(2) The transfer authority provided in subdivision (a)(1) of this section for efficiencies and to eliminate duplication of services are limited only to those services that are provided for multiple divisions of a department, including without limitation to administration, human resources, procurement, communications, fleet operations, and information services.

“(3) The transfer authority provided to the department in subdivision (a)(1) of this section may be used to make transfers only within the department’s appropriation act or between other appropriation acts authorized for the department.

“(b)(1) Each department utilizing the Shared Services Paying Account section or

Regular Salaries — Shared Services section of this act shall submit a report to be included in the Budget Manuals for hearings, conducted by the General Assembly, listing all shared services transfers of positions, funds, and appropriation under this section, which shall be submitted as instructed by the Department of Finance and Administration — Office of Budget for uniformity.

“(2) A report submitted under subdivision (b)(1) of this section shall include the following:

“(A) The position number, authorized position title, class code, grade, business area, and name of the division, section, or unit for the position being transferred to the Regular Salaries — Shared Services section of this act; and

“(B) The fund center, appropriation, appropriation amount, commitment item or items, business area, and name of the division, section, or unit for the fund or appropriation being transferred to the Shared Services Paying Account.

“(c)(1) It is the intent of the Ninety-Second General Assembly that the authority under this section to transfer positions is intended for use for the time period prior to Fiscal Year 2022 to allow cabinet-level departments to establish a centralized Regular Salaries — Shared Services section, with the recommendation that the position transfer authority granted under this section be discontinued after that time.

“(2) The Bureau of Legislative Research shall bring the recommendation in subdivision (c)(1) of this section to the

attention of the chairs conducting the 2021 Regular Session pre-session budget hearings, the chairs of the Special Language Subcommittee, and the members of the Special Language Subcommittee during pre-session budget hearings.

“(d) Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a cabinet-level department each fiscal year is the prerogative of the General Assembly and is usually accomplished by delineating the maximums in the appropriation act or acts and establishing authorized positions and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law. Further, the General Assembly has determined that the cabinet-level departments

created under Acts 2019, No. 910, may operate more efficiently if some flexibility is provided as authorized under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“(e) The provisions of this section shall be in effect from the date of passage through June 30, 2021.”

SUBCHAPTER 15 — DEPARTMENT OF TRANSFORMATION AND SHARED SERVICES

A.C.R.C. Notes. Acts 2020, No. 182, § 13, provided: “SHARED SERVICES.

“(a)(1)(A) The Chief Fiscal Officer of the State may create paying accounts on his or her books and on the books of the Treasurer of State and the Auditor of State for the payment of personal services and operating expenses by the Department of Transformation and Shared Services.

“(B) Upon prior approval of the Arkansas Legislative Council, or if meeting in Legislative Session the Joint Budget Committee, the Chief Fiscal Officer of the State shall direct the transfer of funds and appropriations to the Shared Services Paying Account appropriation section of this act and the transfer of positions to the Regular Salaries — Shared Services appropriation section of this act on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State.

“(2) The transfer authority provided in subdivision (a)(1) of this section for efficiencies and to eliminate duplication of services are limited only to those services that are provided for multiple divisions of a department, including without limitation to administration, human resources, procurement, communications, fleet operations, and information services.

“(3) The transfer authority provided to the department in subdivision (a)(1) of this section may be used to make transfers only within the department’s appropriation act or between other appropriation acts authorized for the department.

“(b)(1) Each department utilizing the Shared Services Paying Account section or Regular Salaries — Shared Services section of this act shall submit a report to be included in the Budget Manuals for hearings, conducted by the General Assembly, listing all shared services transfers of positions, funds, and appropriation under this section, which shall be submitted as instructed by the Department of Finance and Administration — Office of Budget for uniformity.

“(2) A report submitted under subdivision (b)(1) of this section shall include the following:

“(A) The position number, authorized position title, class code, grade, business area, and name of the division, section, or unit for the position being transferred to the Regular Salaries — Shared Services section of this act; and

“(B) The fund center, appropriation, appropriation amount, commitment item or items, business area, and name of the division, section, or unit for the fund or appropriation being transferred to the Shared Services Paying Account.

“(c)(1) It is the intent of the Ninety-Second General Assembly that the authority under this section to transfer positions is intended for use for the time period prior to Fiscal Year 2022 to allow cabinet-level departments to establish a centralized Regular Salaries — Shared Services section, with the recommendation that the position transfer authority granted under this section be discontinued after that time.

“(2) The Bureau of Legislative Research shall bring the recommendation in subdivision (c)(1) of this section to the attention of the chairs conducting the 2021 Regular Session pre-session budget hearings, the chairs of the Special Language Subcommittee, and the members of the Special Language Subcommittee during pre-session budget hearings.

“(d) Determining the maximum number of employees and the maximum amount of appropriation and general revenue funding for a cabinet-level department each fiscal year is the prerogative of the General Assembly and is usually accomplished by delineating the maximums

in the appropriation act or acts and establishing authorized positions and the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law. Further, the General Assembly has determined that the cabinet-level departments created under Acts 2019, No. 910, may operate more efficiently if some flexibility is provided as authorized under this section. Therefore, it is both necessary and appropriate that the General Assembly maintain oversight by requiring prior approval of the Legislative Council or, if the General Assembly is in session, the Joint Budget Committee, as provided by this section. The requirement of approval by the Legislative Council or Joint Budget Committee is not a severable part of this section. If the requirement of approval by the Legislative Council or Joint Budget Committee is ruled unconstitutional by a court of competent jurisdiction, this entire section is void.

“(e) The provisions of this section shall be in effect from the date of passage through June 30, 2021.”

TITLE 26

TAXATION

SUBTITLE 3. ADMINISTRATION OF LOCAL TAXES

CHAPTER 26

ASSESSMENT OF TAXES

SUBCHAPTER 11 — ASSESSMENT OF PROPERTY GENERALLY

26-26-1101. Time to assess realty.

CASE NOTES

Authority.

County assessor, not appellant as Director of the Assessment Coordination Division, was charged with the duty to appraise and assess appellees' working interests, and because the department guidelines were discretionary, appellant did not engage in illegal, unconstitutional,

or ultra vires conduct in issuing the guidelines to the assessor; thus, the circuit court erred in finding appellant was not immune from suit for purposes of Ark. Const., Art. 5, § 20. *Chaney v. Union Producing, LLC*, 2020 Ark. 388, 611 S.W.3d 482 (2020).

SUBTITLE 4. COLLECTION AND ENFORCEMENT

CHAPTER 37

SALE OR FORFEITURE OF REAL PROPERTY

SUBCHAPTER 3 — REDEMPTION OF REALTY TO BE SOLD FOR TAXES

26-37-301. Notice to owner — Definitions.

CASE NOTES

ANALYSIS

Compliance.
Right to Redeem.

Compliance.

Commissioner of State Lands had complied with the notice requirements of subdivision (a)(4)(C) of this section where the certified mailing copies, the undeliverable stamps on those mailings, and the Commissioner's in-office stamps on the regular mail envelopes indicated that the notices were sent and resent, and the notifications were sent to a provided address and to addresses identified by alternative search methods. *Dickey v. Lillard*, 2020 Ark. App. 447, 607 S.W.3d 531 (2020).

Right to Redeem.

Supreme Court decided the merits of a property owner's appeal because the

owner had standing to bring its action challenging a city's decision to condemn its property, despite the city's argument that the property owner did not hold title to the property at the time of the condemnation proceedings due to its failure to pay taxes for the years 2010-2013; not only was the owner named and recognized as the property owner by the city in its condemnation proceeding and resolution, the owner also retained the right to redeem the property during the relevant time period by paying the delinquent taxes, which it ultimately did. *Convent Corp. v. City of North Little Rock*, 2021 Ark. 7 (2021).

SUBTITLE 5. STATE TAXES

CHAPTER 63

ARKANSAS SPECIAL EXCISE TAXES

SUBCHAPTER 3 — RENTAL TAXES

26-63-301. Short-term rentals of tangible personal property — Definitions.

CASE NOTES

Applicability.

Looking to the plain language of the

definition of "short-term rental" as used in this section, as well as the language of the

rental-purchase agreement, the rentals of a rent-to-own retailer were subject to the special excise tax on short-term rentals when the term was weekly or semi-monthly. Thus, applying the plain and ordinary meaning of a period of less than 30 days, the Department of Finance and Administration had met its burden of establishing the proper construction of the statute. *Rent-A-Center East, Inc. v. Walther*, 2021 Ark. 10 (2021).

TITLE 27

TRANSPORTATION

SUBTITLE 2. MOTOR VEHICLE REGISTRATION AND LICENSING

CHAPTER.
16. DRIVER'S LICENSES GENERALLY.

SUBTITLE 2. MOTOR VEHICLE REGISTRATION AND
LICENSING

CHAPTER 14

MOTOR VEHICLE ADMINISTRATION, CERTIFICATE
OF TITLE, AND ANTITHEFT ACT

SUBCHAPTER 3 — PENALTIES AND ADMINISTRATIVE SANCTIONS

27-14-306. Improper use of evidences of registration.

CASE NOTES

<div>ANALYSIS</div> <p>Circuit Court Judge Candidate. Mental State.</p> <p>Circuit Court Judge Candidate.</p> <p>Candidate for circuit court judge was not disqualified from running due to his conviction for a violation of this section, as misdemeanor “infamous crimes” under Ark. Const., Art. 5, § 9 and § 7-1-101 are misdemeanor offenses in which “the finder of fact was required to find, or the defendant to admit, an act of deceit, fraud,</p>	<p>or false statement”, and the appellate court could not say that a violation of this section required a finding or admission of deceit, fraud, or false statement. <i>Weeks v. Thurston</i>, 2020 Ark. 64, 594 S.W.3d 23 (2020).</p> <p>Mental State.</p> <p>Violation of this section does not necessarily involve dishonesty or false statement, and the Supreme Court overrules <i>Fronterhouse v. State</i>, 2015 Ark. App. 211, on that specific point. <i>Weeks v. Thurston</i>, 2020 Ark. 64, 594 S.W.3d 23 (2020).</p>
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While deceit, fraud, or a false statement certainly can be present in a violation of this section, a finder of fact is not required under the statute to find deceit, fraud, or a false statement. Furthermore, only one of

the three ways one can violate this section requires a culpable mental state—knowingly permitting. *Weeks v. Thurston*, 2020 Ark. 64, 594 S.W.3d 23 (2020).

CHAPTER 16

DRIVER'S LICENSES GENERALLY

SUBCHAPTER.

2. DEFINITIONS. [REPEALED.]

SUBCHAPTER 2 — DEFINITIONS

[Repealed.]

SECTION.

27-16-201 — 27-16-207. [Repealed.]

27-16-201 — 27-16-207. [Repealed.]

Publisher's Notes. This repeal is being set out to reflect a correction to the Publisher's Note in the 2019 supplement pamphlet.

This subchapter, concerning definitions, was repealed by Acts 2017, No. 448, § 20.

For current law, see §§ 27-16-104, 27-16-303. The history notes of the former sections have been added to §§ 27-16-104 and 27-16-303, as appropriate.

CHAPTER 19

MOTOR VEHICLE SAFETY RESPONSIBILITY ACT

SUBCHAPTER 5 — ACCIDENT REPORTS

27-19-503. Presumption of uninsured.

CASE NOTES

Construction.

Where an unidentified vehicle that left the scene caused plaintiff motorist to run

off the road and wreck but did not have physical contact with plaintiff's vehicle, the circuit court correctly followed case

law by rejecting plaintiff's argument that failure to comply with this section created a presumption that the unidentified vehicle was uninsured for purposes of uninsured-vehicle insurance coverage, and the circuit court correctly declined to allow a

jury to speculate that the other vehicle was uninsured merely because it left the scene. *Konecny v. Federated Rural Elec. Ins. Exch.*, 2019 Ark. App. 452, 588 S.W.3d 349 (2019).

SUBTITLE 4. MOTOR VEHICULAR TRAFFIC

CHAPTER 51

OPERATION OF VEHICLES — RULES OF THE ROAD

SUBCHAPTER 14 — MISCELLANEOUS RULES

27-51-1405. Throwing destructive or injurious materials on highway prohibited.

CASE NOTES

Construction.

Subsection (c) of this section imposes a duty on one “removing a wrecked or damaged vehicle from a public highway” to also remove “any glass or other injurious substance dropped upon the public highway from the vehicle”. There is nothing in this subsection that requires the material to be unnatural; instead, the focus is on whether the material is an “injurious substance”. *McKim v. Sullivan*, 2019 Ark. App. 485, 588 S.W.3d 118 (2019).

Subsection (b) of this section imposes a duty to immediately remove or cause the removal of “any destructive or injurious material” that he or she “drops or permits to be dropped or thrown upon any highway”. There is nothing in this subsection that would suggest that the material must be unnatural. The focus is instead on whether the material is “destructive or injurious”. *McKim v. Sullivan*, 2019 Ark. App. 485, 588 S.W.3d 118 (2019).

Based on the plain language of this section, nothing in this section limits the substances and materials referenced in the section to unnatural ones. Instead, subsection (a) prohibits one from depositing “any other substance likely to injure any person, animal, or vehicle upon the highway”. *McKim v. Sullivan*, 2019 Ark. App. 485, 588 S.W.3d 118 (2019).

This section cannot be read to allow a person to throw or deposit substantial amounts of dirt, gravel, timber, or hay on the road without possible consequences simply because those substances are natural rather than unnatural. The correct inquiry under the statute is not whether the substances are natural or unnatural; rather, it is whether the material or substance on the public highway at issue is a “substance likely to injure”, is “destructive or injurious material”, or an “injurious substance”. *McKim v. Sullivan*, 2019 Ark. App. 485, 588 S.W.3d 118 (2019).

TITLE 28

WILLS, ESTATES, AND FIDUCIARY RELATIONSHIPS

SUBTITLE 1. GENERAL PROVISIONS

CHAPTER 1

GENERAL PROVISIONS

28-1-104. Probate proceedings.

CASE NOTES

Jurisdiction and Powers Generally.

Circuit court had jurisdiction over a petition to open an estate where the question — whether an operating agreement signed by both the decedent and his grandson authorized transfer of the decedent's LLC interest outside of the estate to

the grandson or whether the decedent's interest should have transferred to his estate — involved the administration, settlement, and distribution of the decedent's estate. *Estate of Cook v. Willhite*, 2020 Ark. App. 292, 601 S.W.3d 453 (2020).

SUBTITLE 2. DESCENT AND DISTRIBUTION

CHAPTER 13

ESCHEATED ESTATES

28-13-110. Reclamation of escheated property.

CASE NOTES

Substantial Compliance.

Group of heirs had substantially complied with this section when they timely filed their petition seeking their per stirpes share of the decedent's estate and

had the county attorney accept service. Thus, the circuit court erred when it dismissed their petition with prejudice. *Lucas v. Wash. Cty.*, 2020 Ark. App. 540 (2020).

CHAPTER 14

UNIFORM TOD SECURITY REGISTRATION ACT

28-14-107. Ownership on death of owner.

CASE NOTES

Jurisdiction.

In creditor's action to set aside an alleged fraudulent conveyance arising from

a transfer-on-death (TOD) beneficiary designation, the circuit court erroneously ruled that the probate court had exclusive

jurisdiction and that the circuit court lacked jurisdiction; under Ark. Const. Amend. 80, § 6, and the fact that, under the Uniform Transfer on Death Security Registration Act, § 28-14-101 et seq., the money transferred from the TOD account did not become part of the estate, the circuit court clearly had jurisdiction. *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019).

28-14-109. Nontestamentary transfer on death.

CASE NOTES

ANALYSIS

Jurisdiction.
Standing.

Jurisdiction.

In creditor’s action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, the circuit court erroneously ruled that the probate court had exclusive jurisdiction and that the circuit court lacked jurisdiction; under Ark. Const. Amend. 80, § 6, and the fact that, under the Uniform Transfer on Death Security Registration Act, § 28-14-101 et seq., the money transferred from the TOD account did not become part of the estate, the circuit court clearly had jurisdiction. *Heritage Props. Ltd. P’ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019).

Standing.

In creditor’s action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, the transferee’s argument failed that the personal representative of the estate and not the creditor had standing for such an action; while there are procedures within the probate code that would allow for the challenge of an alleged fraudulent conveyance, this section concerning TODs plainly allows creditors to pursue their claims against transferees under other Arkansas laws, and thus a creditor also may pursue its claim under the Fraudulent Transfers Act, § 4-59-201 et seq. *Heritage Props. Ltd. P’ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019) (decided under pre-2017 version of § 4-59-201 et seq.).

SUBTITLE 4. ADMINISTRATION OF DECEDENTS’ ESTATES

CHAPTER 40

PROBATE AND GRANT OF ADMINISTRATION

SUBCHAPTER 1 — PROCEEDINGS GENERALLY

28-40-103. Time limit for probate and administration.

CASE NOTES

Probate Barred.

Probate division of the circuit court was statutorily time-barred from administering an estate under this section because the probate court had no authority to administer an estate past the five-year limit set forth in the statute. Further-

more, the passage of almost 100 years from the death of the title owners of the real property in the estate was not an exception to the statute. *Edwards v. Hart*, 2020 Ark. App. 182, 598 S.W.3d 543 (2020).

CHAPTER 48

PERSONAL REPRESENTATIVES

SUBCHAPTER 1 — GENERAL PROVISIONS

28-48-103. Special administrators.

CASE NOTES

Cited: Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc., 2019 Ark. 371, 584 S.W.3d 685 (2019).

CHAPTER 49

MANAGEMENT OF ASSETS

28-49-109. Fraudulent conveyances.

CASE NOTES

ANALYSIS

Jurisdiction.
Standing.

Jurisdiction.

In creditor's action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, the circuit court erroneously ruled that the probate court had exclusive jurisdiction and that the circuit court lacked jurisdiction; under Ark. Const. Amend. 80, § 6, and the fact that, under the Uniform Transfer on Death Security Registration Act, § 28-14-101 et seq., the money transferred from the TOD account did not become part of the estate, the circuit court clearly had jurisdiction. *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019).

Standing.

In creditor's action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, the transferee's argument failed that the personal representative of the estate and not the creditor had standing for such an action; while there are procedures within the probate code that would allow for the challenge of an alleged fraudulent conveyance, section 28-14-109(b) concerning TODs plainly allows creditors to pursue their claims against transferees under other Arkansas laws, and thus a creditor also may pursue its claim under the Fraudulent Transfers Act, § 4-59-201 et seq. *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, 584 S.W.3d 685 (2019) (decided under pre-2017 version of § 4-59-201 et seq.).

CHAPTER 52
ACCOUNTING

28-52-103. Filing of accounts.

CASE NOTES

Applicability.

In an estate dispute where a sister sued her brother, who had held a power of attorney for the father, this section did not apply to the sister’s argument concerning an accounting that the court had directed the brother to file. This section governs

accountings filed during the probate of a decedent’s estate but this case was not the probate of the father’s estate; the probate court handling the estate was the proper forum for the proceeding on the accounting. *Ellis v. Thompson*, 2019 Ark. App. 579, 590 S.W.3d 774 (2019).

SUBTITLE 5. FIDUCIARY RELATIONSHIPS

CHAPTER 65
GUARDIANS GENERALLY

SUBCHAPTER 2 — APPOINTMENT

28-65-204. Preferences.

CASE NOTES

ANALYSIS

Intervention.
Standing.

Intervention.

Permissive intervention under Ark. R. Civ. P. 24(b) in a guardianship proceeding was properly denied as the mother’s appointment as guardian tracked subdivision (b)(4) of this section and was consistent with subsection (c) of this section, and the incapacitated person’s former employer was not a former caretaker, had never been the guardian, and had never

maintained a health proxy for the incapacitated person. *Kennedy v. McDaniel*, 2020 Ark. App. 311, 603 S.W.3d 551 (2020).

Standing.

Where former employer’s motion to intervene in a guardianship proceeding was denied, he was considered a nonparty and accordingly lacked standing to challenge the appointment of the mother as guardian of the 35-year-old daughter. *Kennedy v. McDaniel*, 2020 Ark. App. 311, 603 S.W.3d 551 (2020).

28-65-205. Petition.

CASE NOTES

Proper Party.

Former employer’s Ark. R. Civ. P. 24(a)(1) motion to intervene in a guardianship proceeding was properly denied where the guardianship statute he relied

on is discretionary, and thus it did not confer an unconditional right to intervene. *Kennedy v. McDaniel*, 2020 Ark. App. 311, 603 S.W.3d 551 (2020).

28-65-212. Evaluations.

CASE NOTES

Statutory Requirements.

Award of final guardianship of the adult appellant to his mother and her husband was inappropriate, where a physician's affidavit attached to the emergency petition established, at best, appellant's medical and physical condition, adaptive behavior, and intellectual functioning, but

did not contain any recommendation as to the specific areas for which assistance was needed and the least restrictive alternatives available as required by subdivision (b)(4) of this section. *Helton v. Stogsdill* (In re Helton), 2020 Ark. App. 132, 594 S.W.3d 903 (2020).

SUBCHAPTER 4 — TERMINATION OF GUARDIANSHIP

28-65-401. Termination generally.

CASE NOTES

ANALYSIS

Termination Not Warranted.
Termination Warranted.

Termination Not Warranted.

Father's petition to terminate guardianship was properly denied where he had been found unfit as a parent in the guardianship proceedings, he remained unfit going into the hearing on his petition to terminate the guardianship, and he had invited the error as to whether he was required to prove that guardianship was no longer necessary and in the child's best interests given his attorney's concession at the outset of the petition hearing that the father had the burden to establish that he was a fit parent. *Pike v. Shuler* (In

re L.J.P.), 2019 Ark. App. 456, 588 S.W.3d 58 (2019).

Termination Warranted.

Record did not support the circuit court's determination that the father was unfit, as the father was a presumptively fit parent; once he petitioned the circuit court for termination of the guardianship, the burden was on the guardians to show he was unfit or some other special factors sufficient to overcome his fundamental right to raise his daughter. The guardians did not attempt to argue the father was unfit, and thus the circuit court was clearly erroneous in denying the father's petition to terminate the guardianship. *Samples v. Ward*, 2020 Ark. App. 524 (2020).

CHAPTER 68

UNIFORM POWER OF ATTORNEY ACT

SUBCHAPTER 1 — GENERAL PROVISIONS

28-68-105. Execution of power of attorney.

CASE NOTES

Arbitration Agreement.

While the writing was properly signed under this section, the writing did not grant authority to do all acts that a principal could do but instead referred to two

general subjects, financial and healthcare, with no further explanation, and those terms were not among the descriptive terms for the subjects set out in §§ 28-68-204 through 28-68-217. The power of at-

torney did not grant the daughter the authority to agree to arbitration, and because she did not have authority to bind the nursing home resident (her father) to the arbitration agreement, the agreement

lacked mutual assent and there was no valid arbitration agreement to enforce. *Malvern Operations, LLC v. Moss*, 2020 Ark. App. 355, 605 S.W.3d 291 (2020).

SUBCHAPTER 2 — AUTHORITY

28-68-201. Authority that requires specific grant — Grant of general authority.

CASE NOTES

Arbitration Agreement.

While the writing was properly signed under § 28-68-105, the writing did not grant authority to do all acts that a principal could do but instead referred to two general subjects, financial and healthcare, with no further explanation, and those terms were not among the descriptive terms for the subjects set out in §§ 28-68-204 through 28-68-217. The power of at-

torney did not grant the daughter the authority to agree to arbitration, and because she did not have authority to bind the nursing home resident (her father) to the arbitration agreement, the agreement lacked mutual assent and there was no valid arbitration agreement to enforce. *Malvern Operations, LLC v. Moss*, 2020 Ark. App. 355, 605 S.W.3d 291 (2020).

28-68-202. Incorporation of authority.

CASE NOTES

Arbitration Agreement.

While the writing was properly signed under § 28-68-105, the writing did not grant authority to do all acts that a principal could do but instead referred to two general subjects, financial and healthcare, with no further explanation, and those terms were not among the descriptive terms for the subjects set out in §§ 28-68-204 through 28-68-217. The power of at-

torney did not grant the daughter the authority to agree to arbitration, and because she did not have authority to bind the nursing home resident (her father) to the arbitration agreement, the agreement lacked mutual assent and there was no valid arbitration agreement to enforce. *Malvern Operations, LLC v. Moss*, 2020 Ark. App. 355, 605 S.W.3d 291 (2020).

CHAPTER 69

FIDUCIARIES GENERALLY

SUBCHAPTER 4 — REVOCATION, MODIFICATION, OR TERMINATION OF TRUST

28-69-401. Consent.

CASE NOTES

Applicability.

Consent of a secondary beneficiary to trust amendments was not required because the express terms of the trusts per-

mitted the amendments at issue. *Dawson v. Stoner-Sellers*, 2019 Ark. 410, 591 S.W.3d 299 (2019).

CHAPTER 73

ARKANSAS TRUST CODE

SUBCHAPTER 1 — GENERAL PROVISIONS AND DEFINITIONS

28-73-105. Default and mandatory rules.

CASE NOTES

Trust Amendments.

Consent of a secondary beneficiary to trust amendments was not required because the express terms of the trusts per-

mitted the amendments at issue. *Dawson v. Stoner-Sellers*, 2019 Ark. 410, 591 S.W.3d 299 (2019).

SUBCHAPTER 4 — CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

28-73-411. Modification or termination of noncharitable irrevocable trust by consent.

CASE NOTES

Applicability.

Consent of a secondary beneficiary to trust amendments was not required because the express terms of the trusts per-

mitted the amendments at issue. *Dawson v. Stoner-Sellers*, 2019 Ark. 410, 591 S.W.3d 299 (2019).

SUBCHAPTER 7 — OFFICE OF TRUSTEE

28-73-706. Removal of trustee.

CASE NOTES

Jury Trial.

In litigation brought by a secondary beneficiary over the administration of several family trusts, the circuit court erred by denying plaintiff a jury trial on his legal claims (breach of fiduciary duty, conversion, fraud and concealment, and con-

spiracy); the clean-up doctrine has been abolished in Arkansas. Plaintiff was not entitled to a jury trial on his equitable claims (removal of trustee and injunctive relief). *Dawson v. Stoner-Sellers*, 2019 Ark. 410, 591 S.W.3d 299 (2019).

SUBCHAPTER 10 — LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS
DEALING WITH TRUSTEES

28-73-1001. Remedies for breach of trust.

CASE NOTES

Accounting.

To remedy a breach of trust that has occurred or may occur, the court may order a trustee to account; thus, an ac-

counting is a remedy, not a separate cause of action. Dawson v. Stoner-Sellers, 2019 Ark. 410, 591 S.W.3d 299 (2019).

CONSTITUTION OF THE STATE OF ARKANSAS OF 1874

ARTICLE 2

DECLARATION OF RIGHTS

§ 4. Right of assembly and of petition.

CASE NOTES

Sovereign Immunity.

Where former state employee alleged that he was terminated because he refused to violate the state policy to hire the most qualified individual for a position, and asserted claims under the Arkansas Whistle-Blower Act, § 21-1-601 et seq., and the federal and state constitutions, the circuit court erred when it found that sovereign immunity barred plaintiff's claims against the state officials in their individual capacities; in their individual capacities, the state officials did not enjoy the immunity granted to the State under Ark. Const., Art. 5, § 20. *Harris v.*

Hutchinson, 2020 Ark. 3, 591 S.W.3d 778 (2020).

Because former employee's claims for injunctive relief were unquestionably legal claims against the State of Arkansas, sovereign immunity barred his claims under the Arkansas Whistle-Blower Act, § 21-1-601 et seq., and the state and federal constitutions against the state officials in their official capacities; and plaintiff's conclusory statements and bare allegations were insufficient to establish an illegal, unconstitutional, or ultra vires act such that sovereign immunity would not apply. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

§ 7. Jury trial — Right to — Waiver — Civil cases — Nine jurors agreeing.

CASE NOTES

ANALYSIS

Equitable Claims.
Legal Issues.
Waiver, Civil Cases.

Equitable Claims.

Terminated surgeon was not entitled to a jury trial on his claim that the hospital violated its own professional staff rules and bylaws because only injunctive relief, an equitable remedy, is available for that type of claim. *Williams v. Baptist Health*, 2020 Ark. 150, 598 S.W.3d 487 (2020).

Legal Issues.

In litigation brought by a secondary beneficiary over the administration of several family trusts, the circuit court erred by denying plaintiff a jury trial on his

legal claims (breach of fiduciary duty, conversion, fraud and concealment, and conspiracy); the clean-up doctrine has been abolished in Arkansas. Plaintiff was not entitled to a jury trial on his equitable claims (removal of trustee and injunctive relief). *Dawson v. Stoner-Sellers*, 2019 Ark. 410, 591 S.W.3d 299 (2019).

Waiver, Civil Cases.

In litigation brought by a secondary beneficiary over the administration of several family trusts, plaintiff did not waive his jury trial argument because he requested a jury trial in his petition and, under Ark. R. Civ. P. 38, no more was required; further, plaintiff was not estopped due to his request for appointment of a master because he did not make that

request until after the circuit court ruled against a jury trial. *Dawson v. Stoner-Sellers*, 2019 Ark. 410, 591 S.W.3d 299 (2019).

Arbitration agreements governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq., constitute “a manner prescribed by law” in which one may waive the right to a jury trial; the language concerning waiver in Ark. Const., Art. 2, § 7, is not limited to a “manner prescribed by Arkansas law.” *BHC Pinnacle Pointe Hosp., LLC v. Nelson*, 2020 Ark. 70, 594 S.W.3d 62 (2020).

In a medical malpractice case, the circuit court erred in striking a request by defendants doctor and his practice (jointly, the doctor) for a jury trial as a sanction for

failing to comply with its scheduling order’s mediation requirement because the doctor did not consent to a bench trial, the medical malpractice claim was a legal claim to which the right of a jury trial attached, the circuit court lacked the authority under § 16-7-202 to divest the doctor of his fundamental constitutional right to a jury trial, predispute contractual jury waivers are unenforceable under this section, a trial by jury was demanded under Ark. R. Civ. P. 38, and there is no law prescribing a waiver of the right to a jury trial as a sanction for failing to comply with a court’s order to mediate. *Bandy v. Vick*, 2020 Ark. 334, 608 S.W.3d 903 (2020).

§ 8. Criminal charges — Self-incrimination — Due process — Double jeopardy — Bail.

CASE NOTES

ANALYSIS

Double Jeopardy.

—Mistrial.

Due Process.

—Criminal Proceedings.

—Notice by Publication.

Double Jeopardy.

—Mistrial.

Defendant’s motion to dismiss the charges against him based on double jeopardy grounds was properly denied as the trial court did not intend, by its conduct, to provoke defendant into moving for a mistrial, and defendant was not goaded into requesting a mistrial. Defendant’s right to proceed pro se was revoked when he could not follow the rules of the court and continued to be disruptive both in front of and outside of the presence of the jury; his attorney asked for a mistrial as he did not feel that he could adequately defend defendant at that stage of the trial; the trial court explained that the mistrial would be without any conditions; and defendant welcomed a mistrial. *May v. State*, 2019 Ark. App. 443, 587 S.W.3d 257 (2019).

Defendant’s retrial did not violate double jeopardy because the circuit court did not abuse its discretion in sua sponte declaring a mistrial due to an overruling

necessity, based on (1) a number of circumstances outside the control of the court and the State, including the unexpected unavailability of an interpreter for a second day of trial and a full docket the rest of the week, and (2) the court’s efforts to try to complete the trial in one day. *Vasquez-Ramirez v. State*, 2019 Ark. App. 599, 591 S.W.3d 379 (2019).

Due Process.

—Criminal Proceedings.

Circuit court did not err in rejecting defendant’s claim that his right to due process was violated by undue prosecutorial delay when charges were brought against him in 2015 for the rape of his daughter in Arkansas County and he was tried and convicted for that rape in 2016, but he was not arrested for the Cleburne County 2015 rape of his daughter until January 2018; the record did not reflect any unnecessary delay and defendant did not suffer prejudice because he could only speculate about whether he would have received concurrent sentences if the State had filed rape charges simultaneously in all three counties. *Rayburn v. State*, 2019 Ark. 254, 583 S.W.3d 385 (2019).

Defendant’s argument failed that an in camera examination was constitutionally required of the sexual assault victim’s therapy records and communications

shielded by the absolute psychotherapist-patient privilege; moreover, the record did not show that the State truly had access to the records. *Vaughn v. State*, 2020 Ark. 313, 608 S.W.3d 569 (2020).

—Notice by Publication.

Notice provisions within the Municipal Property Owners' Improvement District Law, § 14-94-101 et seq., did not violate

due process because indirect notice has been held sufficient in matters affecting real estate and appellants did not establish that notice by publication was inappropriate to the circumstances of the case. *Bullock's Ky. Fried Chicken, Inc. v. City of Bryant*, 2019 Ark. 249, 582 S.W.3d 8 (2019).

§ 10. Right of accused enumerated — Change of venue.

CASE NOTES

ANALYSIS

Right to Counsel.

—Self-Representation.

—Waiver.

Witnesses.

—Confrontation.

Right to Counsel.

Trial court did not abuse its discretion in denying defendant's motion for a continuance for the purpose of having a different public defender appointed to represent him; the request to change counsel was made just before his revocation hearing was set to begin, he offered no compelling reasons for wanting the change of counsel, and he did not identify any substitute counsel. In essence, defendant was simply dissatisfied with counsel's efforts at negotiating with the State; he did not allege that counsel was incompetent. *King v. State*, 2019 Ark. App. 531, 589 S.W.3d 420 (2019).

—Self-Representation.

Defendant's appellate counsel was not allowed to withdraw pursuant to *Anders* because counsel did not adequately examine the record for appealable issues and accurately determine that an appeal would be wholly frivolous, and as the record and case law revealed a nonfrivolous question as to whether defendant's attempts to dismiss his attorney were also requests to represent himself — as was his federal and state constitutional right — and if they were, whether he made them sufficiently clear and unequivocal so that the circuit court was required to inquire further. *Bohanan v. State*, 2020 Ark. App. 423 (2020).

—Waiver.

Trial court did not err by finding that defendant made an unequivocal and knowing and intelligent waiver of his right to counsel and could proceed pro se because he was appointed at least three different attorneys and each time stated he did not want the appointed counsel to represent him and would prefer to represent himself, he was given several continuances to find an attorney willing to accept his case but he was unable to do so, and the trial court warned him of the dangers associated with self-representation at several hearings and notified him of his right to counsel. *Dunn v. State*, 2019 Ark. App. 398, 585 S.W.3d 681 (2019).

Trial court did not err in finding defendant competent to proceed pro se; although he was initially found unfit to proceed, he had at least three subsequent findings of competency by three different doctors. *Dunn v. State*, 2019 Ark. App. 398, 585 S.W.3d 681 (2019).

Circuit court did not err in denying defendant's right to waive counsel where his statements, taken in their entirety, represented his frustration with his counsel, not an unequivocal request to waive his right to counsel. *Gardner v. State*, 2020 Ark. 147, 598 S.W.3d 10 (2020).

Witnesses.

—Confrontation.

Defendant's argument failed that an in camera examination was constitutionally required of the sexual assault victim's therapy records and communications shielded by the absolute psychotherapist-patient privilege; moreover, the record did

not show that the State truly had access to the records. *Vaughn v. State*, 2020 Ark. 313, 608 S.W.3d 569 (2020).

§ 13. Redress of wrongs.

CASE NOTES

Sovereign Immunity.

Appellate court rejected plaintiff’s argument that Ark. Const., Art. 2, § 13 supercedes Ark. Const., Art. 5, § 20, noting that the argument was indistinguishable from that made in *Milligan v. Singer*, 2019 Ark. 177; the legislature established the Arkansas State Claims Commission so that

claims against the State may be addressed while preserving the State’s sovereign immunity. However, in their individual capacities, state officials do not enjoy the immunity granted to the State under Ark. Const., Art. 5, § 20. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

§ 15. Unreasonable searches and seizures.

CASE NOTES

ANALYSIS

Warrantless Search.
—Unreasonable.

Warrantless Search.
—Unreasonable.

Police violated defendant’s rights, and therefore the trial court erred by denying defendant’s motion to suppress, because the officer did not procure defendant’s girlfriend’s consent to search her apartment before the search began and they did not tell her that she could deny them

entry before they entered. The officers did not speak their intentions to the girlfriend until they were already inside the apartment and they did not present a consent to search form or seek verbal consent to search from her until they were already inside the apartment. *Virgil v. State*, 2020 Ark. App. 314, 603 S.W.3d 603 (2020).
Law enforcement must inform citizens of their right to refuse a warrantless search of their homes before an officer may enter, not after the warrantless entry has already occurred. *Virgil v. State*, 2020 Ark. App. 314, 603 S.W.3d 603 (2020).

§ 21. Life, liberty and property — Banishment prohibited.

CASE NOTES

ANALYSIS

Opportunity to Be Heard.
Taking of Property.

Opportunity to Be Heard.
In an Arkansas Civil Rights Act case, the company’s due process rights in the operation of the apartment complex that it owned were violated because it was deprived of its property interest by the fire chief’s order that it cease its operations and that its tenants vacate the property; the fire chief was acting under color of the fire code in issuing that order; and the city did not provide any pre- or postdeprivation mechanism for the company to chal-

lenge the closure. *City of Little Rock v. Alexander Apts., LLC*, 2020 Ark. 12, 592 S.W.3d 224 (2020).
In an Arkansas Civil Rights Act case, the city violated the tenants’ due process rights because the tenants had a property interest in the exclusive possession of their apartments; the letter and notice instructing them to vacate by, and that utilities would be turned off on, December 28, 2015, interfered with that exclusive possession; and the tenants were not provided with any pre- or postdeprivation mechanism for challenging their apartments’ closure. *City of Little Rock v. Alex-*

ander Apts., LLC, 2020 Ark. 12, 592 S.W.3d 224 (2020).

Taking of Property.

Circuit court properly granted a city summary judgment on a property owner’s facial due process claim because the owner failed to meet its burden of showing that the city’s condemnation ordinance

and procedures were facially unconstitutional; the city’s ordinance provided for adequate notice before condemnation, as well as a public hearing, and it also included information on how to appeal a condemnation decision. *Convent Corp. v. City of North Little Rock*, 2021 Ark. 7 (2021).

§ 22. Property rights — Taking without just compensation prohibited.

CASE NOTES

Judicial Immunity.

In a private probation company’s 42 U.S.C. § 1983 action, stemming from two Craighead County district court judges’ implementation of an amnesty program forgiving probation fees, the judges were entitled to judicial immunity because such

action was related to district courts’ authorized functions; Arkansas law provided that the district courts had jurisdiction to modify or dismiss probation sentences and conditions of misdemeanor offenders. *Justice Network Inc. v. Craighead Cty.*, 931 F.3d 753 (8th Cir. 2019).

ARTICLE 5

LEGISLATIVE DEPARTMENT

§ 1. Initiative and Referendum.

CASE NOTES

ANALYSIS

Applicability.
Petition.
—In General.
Referendum.
—Emergency Clause.

Applicability.

Ark. Const., Art. 19, § 22, governed the ballot titles of two ballot issues concerning term limits as nothing in the plain language of Acts 2019, No. 376, which enacted Ark. Code Ann. § 7-9-205, expressly stated that a constitutional amendment proposed by the General Assembly had to be reviewed under this section (“Amendment 7”). *Steele v. Thurston*, 2020 Ark. 320, 609 S.W.3d 357 (2020).

Petition.

—In General.

District court’s merits determination rested on the erroneous legal conclusion that the in-person signature and notarization requirements for initiative petitions

were subject to strict scrutiny, but neither requirement violated the First Amendment; there had to be some effect on communication of ideas associated with petition circulation, and the voters did not show the in-person notarization requirement had that effect, and having in-person canvassers was reasonable and non-discriminatory to prevent fraud and mistake. *Miller v. Thurston*, 967 F.3d 727 (8th Cir. 2020).

Referendum.

—Emergency Clause.

Emergency clause of Acts 2019, No. 376 was defective where the stated basis was “to avoid confusion in petition circulation”; Act 376 added additional requirements for getting a referendum on the election ballot, and the prospect of affording those who seek to file a ballot petition additional notice of new requirements for that petition, especially when the people would not be voting on any such initiatives or referenda for at least another 15

months, did not amount to an emergency under Ark. Const., Art. 5, § 1. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

Emergency clause of Acts 2019, No. 376 was not responsive to some real-life circumstance making immediate legislative enactment “necessary for the preservation of the public peace, health and safety”, and reasonable people could not disagree on this question; thus, the emergency clause was set aside. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

As the emergency clause of Acts 2019, No. 376 was ineffective and Act 376’s new requirements were not in effect at the time petitioner filed its proposed referendum and supporting signatures, mandamus was granted directing the Secretary of State to address petitioner’s referendum filings (seeking a referendum on Acts 2019, No. 579) under the pre-Act 376 legal framework for initiatives and referenda. *Safe Surgery Ark. v. Thurston*, 2019 Ark. 403, 591 S.W.3d 293 (2019) (sub. op.).

Cited: *Arkansans for Healthy Eyes v. Thurston*, 2020 Ark. 270 (2020).

§ 9. Persons convicted ineligible.

CASE NOTES

ANALYSIS

“Infamous Crime.”
Pardon.

“Infamous Crime.”

Circuit court did not clearly err in determining that a registered voter had established by a preponderance of the evidence that a circuit court judge candidate had pleaded guilty to and been convicted of violations of the Arkansas Hot Check Law, § 5-37-301 et seq., where it required the voter to demonstrate that he had a clear and certain right to the disqualification of the candidate, thereby correctly applying the burden of proof. The candidate also failed to present documentary evidence to contradict the certified court records and admitted that he was 25 years old at the time, which was consistent with the certified court record. *Wyatt v. Carr*, 2020 Ark. 21, 592 S.W.3d 656 (2020).

Candidate for circuit court judge was not disqualified from running due to his conviction for a violation of § 27-14-306, the fictitious motor vehicle tags statute, as misdemeanor “infamous crimes” under Ark. Const. Art. 5, § 9 and § 7-1-101 are misdemeanor offenses in which “the finder of fact was required to find, or the defendant to admit, an act of deceit, fraud, or false statement”, and the appellate court could not say that a violation of § 27-14-306 required a finding or admission of deceit, fraud, or false statement. *Weeks v. Thurston*, 2020 Ark. 64, 594 S.W.3d 23 (2020).

While deceit, fraud, or a false statement certainly can be present in a violation of

§ 27-14-306, a finder of fact is not required under the statute to find deceit, fraud, or a false statement. *Weeks v. Thurston*, 2020 Ark. 64, 594 S.W.3d 23 (2020).

Circuit court properly declared an alderman-elect ineligible to run for public office because he had pled guilty to “voting more than once in an election” in violation of § 7-1-103; the framers of this section intended for an “infamous crime” to include crimes involving elements of deceit, dishonesty, impugning on the integrity of the office, and directly impacting the person’s ability to serve as an elected official; and, with the inclusion of § 7-1-103(b)(2)(A), the General Assembly deliberately chose to exclude from public office all persons found guilty of election-related misdemeanors, regardless of whether the record was later sealed. *Pruitt v. Smith*, 2020 Ark. 382, 610 S.W.3d 660 (2020).

Pardon.

Circuit court properly granted a writ of mandamus and declaratory judgment in favor of the Republican Party’s nominee for a House district because the Democratic Party’s nominee had been convicted of crimes that disqualified him from serving in the Arkansas House of Representatives where the crimes involved “acts of deceit, fraud, or false statement” within the definition of “infamous crime” in this section, and his presidential pardon did not restore his eligibility to sit as a representative. *Gray v. Webb*, 2020 Ark. 385, 611 S.W.3d 466 (2020).

§ 20. State not made defendant.**CASE NOTES****ANALYSIS**

Construction.

Actions Proper.

—Declaratory Judgments.

—Individual Capacity.

—Ultra Vires Conduct.

Improper Actions.

—Exceptions Not Applicable.

—Non-Adjudicatory Agency Decision.

—State Officers.

—Statutory Provisions.

Construction.

Appellate court rejected plaintiff's argument that Ark. Const., Art. 2, § 13 supersedes Ark. Const., Art. 5, § 20, noting that the argument was indistinguishable from that made in *Milligan v. Singer*, 2019 Ark. 177; the legislature established the Arkansas State Claims Commission so that claims against the State may be addressed while preserving the State's sovereign immunity. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

Actions Proper.**—Declaratory Judgments.**

Marijuana cultivation facility applicant was allowed to proceed on an equal protection claim against the Medical Marijuana Commission as it was premised on the State's allegedly unconstitutional actions and sought a declaratory judgment, and the applicant had sufficiently alleged state action that differentiated among individuals. *Ark. Dep't of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC*, 2020 Ark. 213, 601 S.W.3d 111 (2020).

—Individual Capacity.

Where former state employee alleged that he was terminated because he refused to violate the state policy to hire the most qualified individual for a position, and asserted claims under the Arkansas Whistle-Blower Act, § 21-1-601 et seq., and the federal and state constitutions, the circuit court erred when it found that sovereign immunity barred plaintiff's claims against the state officials in their individual capacities; in their individual capacities, the state officials did not enjoy the immunity granted to the State under

Ark. Const., Art. 5, § 20. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

While the circuit court properly granted a motion to dismiss filed by a state agency and its employees in their official capacities based on sovereign and qualified immunity, its ruling dismissing all the claims against the employees in their individual capacities was reversed because the employees in their individual capacities did not enjoy the constitutional immunity granted to the State. *Hostler v. Dennison*, 2020 Ark. App. 255, 601 S.W.3d 142 (2020).

—Ultra Vires Conduct.

Marijuana cultivation facility applicant's claim that the Medical Marijuana Commission failed to adopt model rules promulgated by the Attorney General under § 25-15-215, or give a reason for not doing so, was allowed to proceed under § 25-15-207 as it involved the applicability or validity of the Commission's rules, rather than the Commission's application of those rules to the applicant. This claim could proceed under the "ultra vires" or "illegal acts" exception to sovereign immunity. *Ark. Dep't of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC*, 2020 Ark. 213, 601 S.W.3d 111 (2020).

Improper Actions.**—Exceptions Not Applicable.**

Because former employee's claims for injunctive relief were unquestionably legal claims against the State of Arkansas, sovereign immunity barred his claims under the Arkansas Whistle-Blower Act, § 21-1-601 et seq., and the state and federal constitutions against the state officials in their official capacities; and plaintiff's conclusory statements and bare allegations were insufficient to establish an illegal, unconstitutional, or ultra vires act such that sovereign immunity would not apply. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

Department of Human Services was entitled to dismissal of a complaint on sovereign immunity grounds because plaintiffs were seeking monetary damages, not

injunctive relief, and the exception to sovereign immunity for acts that are illegal, unconstitutional, ultra vires, arbitrary, capricious, or in bad faith does not apply to claims for money damages. *Ark. Dep't of Human Servs. v. Harris*, 2020 Ark. 30, 592 S.W.3d 670 (2020).

Circuit court properly granted summary judgment to the Arkansas State Police (ASP) in an action by a towing company and an employee for injunctive and declaratory relief asserting that the ASP policy prohibiting individuals with felony convictions from placement on the ASP Towing Rotation List was illegal under § 17-1-103. Plaintiffs' suit was barred by sovereign immunity, because § 17-1-103 did not apply to ASP, as ASP did not deal in licensing or regulating the occupation of towing within the meaning of § 17-1-103(f), as required for § 17-1-103 to apply; thus, plaintiffs failed to demonstrate that the illegal-act exception to sovereign immunity applied. *Steve's Auto Ctr. of Conway, Inc. v. Ark. State Police*, 2020 Ark. 58, 592 S.W.3d 695 (2020).

County assessor, not appellant as Director of the Assessment Coordination Division, was charged with the duty to appraise and assess appellees' working interests, and because the department guidelines were discretionary, appellant did not engage in illegal, unconstitutional, or ultra vires conduct in issuing the guidelines to the assessor; thus, the circuit court erred in finding appellant was not immune from suit for purposes of this section. *Chaney v. Union Producing, LLC*, 2020 Ark. 388, 611 S.W.3d 482 (2020).

—Non-Adjudicatory Agency Decision.

Marijuana cultivation facility applicant could not proceed to the extent its complaint rested on § 25-15-212 as a jurisdictional basis as the Medical Marijuana Commission's decision to disqualify it took place without notice or a hearing, and thus it was not the result of an adjudication. *Ark. Dep't of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC*, 2020 Ark. 213, 601 S.W.3d 111 (2020).

—State Officers.

Law professor's official-capacity monetary relief claims against state university officials were properly dismissed because sovereign immunity barred such claims; claims for monetary damages against the state and state employees acting in their official capacities are barred by sovereign immunity. *Steinbuch v. Univ. of Ark.*, 2019 Ark. 356, 589 S.W.3d 350 (2019).

—Statutory Provisions.

Because former employee's claims for injunctive relief were unquestionably legal claims against the State of Arkansas, sovereign immunity barred his claims under the Arkansas Whistle-Blower Act, § 21-1-601 et seq., and the state and federal constitutions against the state officials in their official capacities; and plaintiffs' conclusory statements and bare allegations were insufficient to establish an illegal, unconstitutional, or ultra vires act such that sovereign immunity would not apply. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

Arkansas Governor did not waive sovereign immunity by signing the Arkansas Whistle-Blower Act, § 21-1-601 et seq., because the governor does not enact legislation. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

Where former state employee alleged that he was terminated because he refused to violate the state policy to hire the most qualified individual for a position, and asserted claims under the Arkansas Whistle-Blower Act, § 21-1-601 et seq., and the federal and state constitutions, the circuit court erred when it found that sovereign immunity barred plaintiff's claims against the state officials in their individual capacities; in their individual capacities, the state officials did not enjoy the immunity granted to the State under Ark. Const., Art. 5, § 20. *Harris v. Hutchinson*, 2020 Ark. 3, 591 S.W.3d 778 (2020).

§ 32. Workmen’s Compensation Laws — Actions for personal injuries.

CASE NOTES

Exclusive Remedy.

General Assembly validly exercised its constitutionally granted authority when crafting § 11-9-105(a), the workers’ compensation exclusive remedy provision, to include “stockholders” and “principals” as “employers”. *Myers v. Yamato Kogyo Co.*, 2020 Ark. 135, 597 S.W.3d 613 (2020).

Workers’ Compensation Commission’s conclusion that the parent companies of the direct employer were statutory em-

ployers as principals and stockholders of the direct employer (and thus immune under the exclusive remedy provision) was supported by substantial evidence. Accordingly, § 11-9-105(a), the workers’ compensation exclusive remedy provision, was constitutional as applied because the parent companies had an employment relationship with the deceased employee. *Myers v. Yamato Kogyo Co.*, 2020 Ark. 135, 597 S.W.3d 613 (2020).

ARTICLE 7

JUDICIAL DEPARTMENT

§ 28. County courts — Jurisdiction — Single judge holding court.

CASE NOTES

Jurisdiction.

Circuit court and thus an appellate court were without jurisdiction to hear a case related to county taxes because the Arkansas Constitution explicitly vests ju-

risdiction with county courts for all matters relating to county taxes. Dismissal of the appeal was therefore appropriate. *Eddy v. Haley*, 2020 Ark. App. 430, 606 S.W.3d 613 (2020).

§ 47. Constables — Term of office — Certificate of election.

CASE NOTES

Township Lines.

Constables are township officers and the county court cannot abolish the constable position from a township, as each township must have an elected constable, but this requirement does not take away from the county court’s authority to abol-

ish or alter township lines; counties are not required to maintain a specific number of townships or constable positions, and there must be one elected constable position in each township. *Clowers v. Edwards*, 2020 Ark. 367 (2020).

ARTICLE 9

EXEMPTION

§ 7. Married woman’s separate property — Right of disposition — Not liable for debts of husband.

CASE NOTES

Intentional Acts Exclusion.

Insurance policy’s intentional acts exclusion barred an innocent spouse’s recovery when the spouse’s husband burned down the parties’ house and died by suicide inside the house, and the innocent

spouse’s argument failed that denying her recovery would unconstitutionally subject her property rights in the policy to the debts of her husband. *Shelter Mut. Ins. Co. v. Lovelace*, 2020 Ark. 93, 594 S.W.3d 84 (2020).

ARTICLE 16

FINANCE AND TAXATION

§ 5. Property taxed according to value — Procedures for valuation — Tax exemptions.

CASE NOTES

ANALYSIS

Exemptions.

—Hospitals.

—Improvement Districts.

—Public Property.

Exemptions.

—Hospitals.

It was not clear error to hold that seven parcels of land owned by a hospital were tax-exempt, where the county tax assessor argued that the hospital’s use of the parcels for outpatient clinics was for the pursuit of compensation rather than exclusively for public charity. It was undisputed that the hospital was technically a charitable organization, that the hospital and the hospital’s clinics were open to the general public, and that no one was refused services due to inability to pay; the parcels were used exclusively by hospital employees to operate outpatient health-care clinics open to the general public; and precedent did not require a specific percentage of free medical care to qualify for the tax exemption. *Hardesty v. N. Ark. Med. Servs.*, 2019 Ark. App. 410, 585 S.W.3d 177 (2019).

—Improvement Districts.

Circuit court committed no reversible error in finding that a recreational improvement district was not operated exclusively for public purposes, and thus was not exempt from ad valorem taxes, where it was formed to serve the district inhabitants and “to contract for the right of the district’s property owners”, there was a disparity in the membership fees paid by residents and nonresidents, thereby providing preferential access to residents, and portions of the clubhouse were leased out to a third-party vendor for profit. *Silver Springs Prop. Owners’ Rec. Improvement Dist. No. 30 of Haskell v. Arey*, 2019 Ark. App. 520, 588 S.W.3d 864 (2019).

—Public Property.

Circuit court erred in affirming a county assessor’s denial of a tax exemption under this section, for three land parcels owned by a city and its airport (jointly, the airport) because a government entity’s ownership of unleased property while it pursued a private lease could constitute an exclusive public purpose, the unrefuted evidence showed that the airport utilized

the properties in a manner that served an exclusive public purpose during the unleased periods, and the county assessor's failure to file an answer and comply with Ark. Dist. Ct. R. 9(c) was a procedural

error, not a jurisdictional one, that did not deprive the circuit court of jurisdiction. *City of Little Rock v. Ward*, 2020 Ark. 399, 611 S.W.3d 471 (2020).

§ 11. Levy and appropriation of taxes.

CASE NOTES

Elections.

Trial court did not err in dismissing an illegal-exaction complaint against a city alleging that the sole purpose of a local sales and use tax approved at a special election was to satisfy the city's debt to the federal government and that funds collected in excess of that debt were an illegal exaction. The trial court properly utilized the enabling ordinance and ballot

title in determining the approved uses for the excess funds, despite plaintiffs' contention that the court should be permitted to consider evidence other than the ballot title, and it was undisputed that the plain language of the ordinance and ballot title clearly permitted the city to use the funds to pay payroll and employment taxes. *Carlock v. City of Blytheville*, 2019 Ark. 302, 586 S.W.3d 155 (2019).

§ 13. Illegal exactions.

CASE NOTES

ANALYSIS

Appeal.

Expenditure of Funds.

—Ballot Title.

—From County Hospital Tax.

Taxes.

—Not a Tax.

Appeal.

Order on appeal in an illegal exaction case was not a final, appealable order because it contemplated further action by the parties and the circuit court. Additionally, the Attorney General did not seek a Rule 54 certificate to certify the issues presented for appeal. Thus, the appeal was dismissed without prejudice. *Ozark Mt. Solid Waste Dist. v. JMS Enters.*, 2021 Ark. 4 (2020).

Expenditure of Funds.

—Ballot Title.

Trial court did not err in dismissing an illegal-exaction complaint against a city alleging that the sole purpose of a local sales and use tax approved at a special election was to satisfy the city's debt to the federal government and that funds collected in excess of that debt were an illegal exaction. The trial court properly utilized the enabling ordinance and ballot

title in determining the approved uses for the excess funds, despite plaintiffs' contention that the court should be permitted to consider evidence other than the ballot title, and it was undisputed that the plain language of the ordinance and ballot title clearly permitted the city to use the funds to pay payroll and employment taxes. *Carlock v. City of Blytheville*, 2019 Ark. 302, 586 S.W.3d 155 (2019).

—From County Hospital Tax.

Circuit court properly rejected plaintiffs' claim that there was an illegal exaction from public funds when the county treasurer sent the funds from the county hospital tax approved by Ark. Const. Amend. 32 to the state to be used to obtain Medicaid matching funds from the federal government before the funds were returned to the county children's hospital; the hospital directed that the money be sent to the state, and the hospital's direction of the funds was tantamount to its receiving the funds, and plaintiff cited no authority for the argument that funds from the hospital tax could not be commingled with other funds. *Blakely v. Ark. Children's Hosp.*, 2019 Ark. App. 568, 590 S.W.3d 199 (2019).

Circuit court properly rejected plaintiffs' claim that there was an illegal exac-

tion from public funds as a matter of law because the county children’s hospital treated children from outside Pulaski County; the plain language of the ordinance did not restrict use of the hospital tax approved by Ark. Const. Amend. 32 to the treatment of Pulaski County residents. Also, plaintiff failed to challenge the lower court’s conclusion that adequate medical care was made available to all children residing in the county. *Blakely v. Ark. Children’s Hosp.*, 2019 Ark. App. 568, 590 S.W.3d 199 (2019).

Taxes.

—Not a Tax.

Circuit court properly granted summary judgment in favor of a city and its

sewer department in a citizen’s illegal exaction suit because the \$5 monthly fee for sewer-system repairs and upgrades, imposed by a city ordinance, was not a tax and thus not an illegal exaction; only those persons who directly benefited from the city’s sewer services were required to pay the fee, and the funds collected were accounted for separately and used only for their designated purpose. The \$7,971 surplus also was not a tax, and plaintiff failed to show that the surplus was used for anything other than the repairs. *Watson v. City of Blytheville*, 2020 Ark. 51, 593 S.W.3d 18 (2020).

ARTICLE 19

MISCELLANEOUS PROVISIONS

§ 22. Constitutional amendments.

CASE NOTES

ANALYSIS

Ballot Title.
Single Subject.

Ballot Title.

This section governed the ballot titles of two ballot issues concerning term limits as nothing in the plain language of Acts 2019, No. 376, which enacted Ark. Code Ann. § 7-9-205, expressly stated that a constitutional amendment proposed by the General Assembly had to be reviewed under Ark. Const., Art. 5, § 1 (“Amendment 7”). *Steele v. Thurston*, 2020 Ark. 320, 609 S.W.3d 357 (2020).

Ballot issues concerning term limits complied with the requirements of this section, as they sufficiently identified and distinguished the proposed amendments from others on the ballot and in the public. *Steele v. Thurston*, 2020 Ark. 320, 609 S.W.3d 357 (2020).

Single Subject.

Ballot issue concerning term limits did not violate the same-subject provision because its parts were reasonably germane to each other and to the general subject of the amendment. *Steele v. Thurston*, 2020 Ark. 320, 609 S.W.3d 357 (2020).

AMENDMENTS TO THE CONSTITUTION OF ARKANSAS OF 1874

AMENDMENT.

73. ARKANSAS TERM LIMITATION AMENDMENT.

101. [TRANSPORTATION SALES TAX CONTINUATION].

AMENDMENT.

102. ARKANSAS TERM LIMITS AMENDMENT.

AMEND. 28. REGULATING PRACTICE OF LAW.

CASE NOTES

ANALYSIS

Practice of Law.

—Personal Representatives.

Practice of Law.

—Personal Representatives.

Circuit court did not abuse its discretion when it dismissed a personal representative's wrongful death complaint as being untimely filed because the original pro se complaint filed by plaintiff, a nonlawyer,

as the personal representative of the estate constituted the unauthorized practice of law and was a nullity and could not be amended; by the time an attorney filed a complaint, more than three years had passed since the decedent's death, and the personal representative's claims were barred by the three-year statute of limitations. *Henson v. Craddock*, 2020 Ark. 24, 593 S.W.3d 10 (2020).

AMEND. 32. COUNTY OR CITY HOSPITALS.

§ 2. Result of election — Certification and proclamation — Tax levy.

CASE NOTES

Illegal Exaction Claim.

Circuit court properly rejected plaintiff's claim that there was an illegal exaction from public funds when the county treasurer sent the funds from the county hospital tax approved by Ark. Const. Amend. 32 to the state to be used to obtain Medicaid matching funds from the federal government before the funds were returned to the county children's hospital; the hospital directed that the money be sent to the state, and the hospital's direction of the funds was tantamount to its receiving the funds, and plaintiff cited no authority for the argument that funds from the hospital tax could not be commingled with other funds. *Blakely v. Ark.*

Children's Hosp., 2019 Ark. App. 568, 590 S.W.3d 199 (2019).

Circuit court properly rejected plaintiff's claim that there was an illegal exaction from public funds as a matter of law because the county children's hospital treated children from outside Pulaski County; the plain language of the ordinance did not restrict use of the hospital tax approved by Ark. Const. Amend. 32 to the treatment of Pulaski County residents. Also, plaintiff failed to challenge the lower court's conclusion that adequate medical care was made available to all children residing in the county. *Blakely v. Ark. Children's Hosp.*, 2019 Ark. App. 568, 590 S.W.3d 199 (2019).

AMEND. 55. REVISION OF COUNTY GOVERNMENT.**§ 3. Power of county judge.****CASE NOTES****Township Lines.**

Authority to abolish or alter township lines is statutorily vested in the county court; Ark. Const. Amend. 55 did not transfer that power to the county judge as

an executive function, thus it remains within the county court, over which the county judge presides. *Clowers v. Edwards*, 2020 Ark. 367 (2020).

AMEND. 73. ARKANSAS TERM LIMITATION AMENDMENT.

Publisher's Notes. Section 2 of this Amendment has been amended by Ark. Const. Amend. 102.

§ 2. Legislative Branch.

(a) The Arkansas House of Representatives shall consist of members to be chosen every second year by the qualified electors of the several counties.

(b) The Arkansas Senate shall consist of members to be chosen every four (4) years by the qualified electors of the several districts.

(c)(1)(A) Except as provided in subdivision (c)(1)(E) of this section, a person first elected as a member of the General Assembly before January 1, 2021, shall serve no more than sixteen (16) years, whether consecutive or nonconsecutive.

(B) A member first elected as a member of the General Assembly before January 1, 2021, who completes his or her sixteenth year of service during a term of office for which he or she has been elected may serve until the completion of that term of office.

(C) The years of service in both the Senate and the House of Representatives shall be added together and included to determine the total number of years in office of a member of the General Assembly first elected as a member of the General Assembly before January 1, 2021.

(D) A partial legislative term served as a result of a special election under Article 5, § 6, or a two-year term served as a result of apportionment of the Senate shall not be included in calculating the total number of years served by a member of the General Assembly first elected as a member of the General Assembly before January 1, 2021.

(E)(i) A person who has served sixteen (16) or more years in the General Assembly under subdivision (c)(1) of this section shall not be eligible for subsequent service in the General Assembly until four (4) years after the expiration of the last term of office in the General

Assembly for which he or she was elected.

(ii) Subsequent service in the General Assembly under subdivision (c)(1)(E)(i) of this section shall be as provided under subdivision (c)(2) of this section.

(2)(A)(i) A person first elected as a member of the General Assembly on or after January 1, 2021, shall serve no more than twelve (12) consecutive years.

(ii) A member of the General Assembly first elected to the General Assembly on or after January 1, 2021, who serves twelve (12) or more consecutive years shall not be eligible for subsequent service in the General Assembly until four (4) years after the expiration of the last term of office in the General Assembly for which he or she was elected.

(B) A member first elected to the General Assembly on or after January 1, 2021, who completes his or her twelfth consecutive year of service during a term of office for which he or she has been elected may serve until the completion of that term of office.

(C) Consecutive years of service in both the Senate and the House of Representatives shall be added together and included to determine the total number of consecutive years in office of a member first elected to the General Assembly on or after January 1, 2021.

(D)(i) A two-year term served as a result of apportionment of the Senate shall be included in calculating the total number of consecutive years served by a member of the General Assembly first elected to the General Assembly on or after January 1, 2021.

(ii) A partial legislative term served as a result of a special election under Article 5, § 6, shall not be included in calculating the total number of consecutive years served by a member of the General Assembly first elected to the General Assembly on or after January 1, 2021. [As amended by Const. Amend. 94; Const. Amend. 102.]

Publisher's Notes. Ark. Const. Amend. 102, which amended this section effective January 1, 2021, was proposed by S.J.R. 15 during the 2019 Regular Session and adopted at the 2020 general election by a vote of 647,861 for and 521,979 against.

Before amendment by Amend. 102, this section read:

“§ 2. Legislative Branch.

“(a) The Arkansas House of Representatives shall consist of members to be chosen every second year by the qualified electors of the several counties.

“(b) The Arkansas Senate shall consist of members to be chosen every four years by the qualified electors of the several districts.

“(c)(1) A member of the General Assembly shall serve no more than sixteen (16) years, whether consecutive or nonconsecutive.

“(2) A member who completes his or her sixteenth year of service during a term of office for which he or she has been elected may serve until the completion of that term of office.

“(3) The years of service in both the Senate and the House of Representatives shall be added together and included to determine the total number of years in office.

“(4) A partial legislative term served as a result of a special election under Article 5, § 6, or a two-year term served as a result of apportionment of the Senate

shall not be included in calculating the total number of years served by a member of the General Assembly. [As amended by Const. Amend. 94.]”

AMEND. 80. [REVISION OF THE JUDICIAL ARTICLE] (MULTIPLE PROVISIONS OF CONST., ART. 7 REPEALED; CONST. AMENDS. 58, 64, AND 77, § 1, REPEALED; AND SECTIONS ADDED).

§ 1. Judicial power.

CASE NOTES

Cited: Evans v. City of Helena-West Helena, 912 F.3d 1145 (8th Cir. 2019); City of Little Rock v. Nelson, 2020 Ark. 34, 592 S.W.3d 633 (2020).

§ 4. Superintending control.

CASE NOTES

Cited: City of Little Rock v. Nelson, 2020 Ark. 34, 592 S.W.3d 633 (2020).

§ 6. Circuit courts.

CASE NOTES

Jurisdiction.
In creditor’s action to set aside an alleged fraudulent conveyance arising from a transfer-on-death (TOD) beneficiary designation, the circuit court erroneously ruled that the probate court had exclusive jurisdiction and that the circuit court lacked jurisdiction; the circuit court clearly had jurisdiction under Ark. Const. Amend. 80, § 6, and because, under the Uniform Transfer on Death Security Registration Act, § 28-14-101 et seq., the money transferred from the TOD account did not become part of the estate. Heritage Props. Ltd. P’ship v. Walt & Lee Keenihan Found., Inc., 2019 Ark. 371, 584 S.W.3d 685 (2019).

§ 7. District courts.

CASE NOTES

District Court Judge.
Due process violation arising from a district court judge’s installment fee policy could be imputed to the city because the judge was an employee of the city since the Little Rock District Court had not yet been reorganized as a state district court at the times relevant to the case; the Little Rock District Court was not part of the state district court program at the time of the events alleged in the complaint. City of Little Rock v. Nelson, 2020 Ark. 34, 592 S.W.3d 633 (2020).

§ 10. Jurisdiction, venue, circuits, districts and number of judges.

CASE NOTES

ANALYSIS

District Court Clerk.
District Court Judge.

District Court Clerk.

Federal district court erred in dismissing plaintiff's § 1983 action alleging that defendant city violated her constitutional rights by failing to document that she paid certain fines and requesting issuance of a warrant for her arrest, as the complaint stated at least a plausible claim that the Phillips County district court clerk was a city official at the time of the alleged wrongdoing, rather than a state official, in which case the city could be accountable for actions of the clerk that established or carried out an unconstitutional policy or custom of the municipality. *Evans v. City of Helena-West Helena*, 912 F.3d 1145 (8th Cir. 2019).

It was not until after the events alleged in the complaint that Phillips County was one of several counties that were reorga-

nized as state district courts and served by a state district court judge. Before that time, state law gave cites and counties authority to set salaries for the district court clerk, and the complaint alleged that employees of the district court were hired by the city and paid by the city. *Evans v. City of Helena-West Helena*, 912 F.3d 1145 (8th Cir. 2019).

District Court Judge.

Due process violation arising from a district court judge's installment fee policy could be imputed to the city because the judge was an employee of the city since the Little Rock District Court had not yet been reorganized as a state district court at the times relevant to the case; the Little Rock District Court was not part of the state district court program at the time of the events alleged in the complaint. *City of Little Rock v. Nelson*, 2020 Ark. 34, 592 S.W.3d 633 (2020).

§ 13. Assignment of special and retired judges.

CASE NOTES

Jurisdiction.

In litigation involving the administration of several family trusts, the chief justice did not lack jurisdiction to appoint a special judge under the circumstances presented, even though all the judges in the judicial circuit had not recused. Plaintiff's focus on Admin. Order No. 16, § III,

ignored the broad language of Ark. Const. Amend. 80, § 13, and Admin. Order No. 16, § II, which provide the chief justice with the authority to assign a special judge if the chief justice determines there is "other need" for a special judge. *Dawson v. Stoner-Sellers*, 2019 Ark. 410, 591 S.W.3d 299 (2019).

§ 16. Qualifications and terms of justices and judges.

CASE NOTES

Judicial Qualifications.

Distinction between "residence" and "domicile" is not contemplated by Ark. Const. Amend. 80; it simply requires that justices and judges be qualified electors within the geographical area from which they are chosen. *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

Circuit court did not clearly err in de-

termining that an appointed district court judge was a qualified elector of a specific district, thereby qualifying her as a candidate for a position on the Court of Appeals; Ark. Const. Amend. 80, § 16(D) simply requires that justices and judges be qualified electors within the geographical area from which they are chosen, and the appointed judge had established her

physical presence in the district by purchasing a home, registering to vote, and assessing personal property there (even though she still owned another home outside the district). *Barrett v. Thurston*, 2020 Ark. 36, 593 S.W.3d 1 (2020).

AMEND. 91. [GENERAL OBLIGATION FOUR-LANE HIGHWAY CONSTRUCTION AND IMPROVEMENT BONDS].

§ 2. Definitions.

CASE NOTES

Illegal Exaction Suit.

Circuit court erred in dismissing an illegal exaction suit filed by citizens and taxpayers that sought to enjoin the expenditure of highway funds for two projects to improve six-lane portions of interstate highways; while the circuit court found that the intent of the constitutional provi-

sion at issue was to provide for funding for state highways, the repeated reference to “four-lane highways” and the lack of a specific reference to six-lane interstate highways meant the funds could not be used for the latter. *Buonaiuto v. Gibson*, 2020 Ark. 352, 609 S.W.3d 381 (2020).

AMEND. 98. ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016.

§ 8. Licensing of dispensaries and cultivation facilities.

CASE NOTES

Judicial Review.

Marijuana cultivation facility applicant could not proceed to the extent its complaint rested on § 25-15-212 as a jurisdictional basis as the Medical Marijuana Commission’s decision to disqualify it took place without notice or a hearing, and thus it was not the result of an adjudication. *Ark. Dep’t of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC*, 2020 Ark. 213, 601 S.W.3d 111 (2020).

Marijuana cultivation facility applicant’s claim that the Medical Marijuana Commission failed to adopt model rules promulgated by the Attorney General under § 25-15-215, or give a reason for not doing so, was allowed to proceed under § 25-15-207, as it involved the applicability or validity of the Commission’s rules, rather than the Commission’s application of those rules to the applicant. This claim could proceed under the “ultra vires” or “illegal acts” exception to sovereign immunity. *Ark. Dep’t of Fin. & Admin. v. Car-*

penter Farms Med. Grp., LLC, 2020 Ark. 213, 601 S.W.3d 111 (2020).

Medical Marijuana Commission’s rule permitting an appeal to circuit court of the denial of a cultivation license violated sovereign immunity principles and could not serve as the jurisdictional basis for the applicant’s suit challenging the denial of its application. *Ark. Dep’t of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC*, 2020 Ark. 213, 601 S.W.3d 111 (2020).

Marijuana cultivation facility applicant was allowed to proceed on an equal protection claim against the Medical Marijuana Commission and the claim was not barred by sovereign immunity as it was premised on the State’s allegedly unconstitutional actions and sought a declaratory judgment, and the applicant had sufficiently alleged state action that differentiated among individuals. *Ark. Dep’t of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC*, 2020 Ark. 213, 601 S.W.3d 111 (2020).

§ 19. Medical Marijuana Commission — Creation.

CASE NOTES

Judicial Review.

Marijuana cultivation facility applicant could not proceed to the extent its complaint rested on § 25-15-212 as a jurisdictional basis as the Medical Marijuana Commission’s decision to disqualify it took place without notice or a hearing, and thus it was not the result of an adjudication. Ark. Dep’t of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC, 2020 Ark. 213, 601 S.W.3d 111 (2020).

Marijuana cultivation facility applicant’s claim that the Medical Marijuana Commission failed to adopt model rules promulgated by the Attorney General under § 25-15-215, or give a reason for not doing so, was allowed to proceed under § 25-15-207, as it involved the applicability or validity of the Commission’s rules, rather than the Commission’s application

of those rules to the applicant. This claim could proceed under the “ultra vires” or “illegal acts” exception to sovereign immunity. Ark. Dep’t of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC, 2020 Ark. 213, 601 S.W.3d 111 (2020).

Marijuana cultivation facility applicant was allowed to proceed on an equal protection claim against the Medical Marijuana Commission and the claim was not barred by sovereign immunity as it was premised on the State’s allegedly unconstitutional actions and sought a declaratory judgment, and the applicant had sufficiently alleged state action that differentiated among individuals. Ark. Dep’t of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC, 2020 Ark. 213, 601 S.W.3d 111 (2020).

AMEND. 101. [TRANSPORTATION SALES TAX CONTINUATION].

Publisher’s Notes. This amendment was proposed by H.J.R. 1018 during the 2019 Regular Session and adopted at the 2020 general election by a vote of 660,018 for and 532,915 against.

The bracketed heading was added by the Publisher.

Section 1 of the amendment added §§ 1-4 set out below.

§ 1. Intent of amendment.

(a) Arkansas Constitution, Amendment 91, levies a one-half percent sales and use tax to provide additional funding for the state’s four-lane highway system, county roads, and city streets.

(b) The one-half percent sales and use tax under Arkansas Constitution, Amendment 91, shall be abolished when there are no bonds outstanding to which tax collections are pledged as provided in this amendment.

(c) Notwithstanding Arkansas Constitution, Amendment 91, § 8, it is the intent of this amendment that the sales and use tax levied under Arkansas Constitution, Amendment 91, continue after the retirement of the bonds authorized in Arkansas Constitution, Amendment 91, to provide special revenue for use of maintaining, repairing, and improving the state’s system of highways, county roads, and city streets.

§ 2. Excise tax.

(a)(1) Except for food and food ingredients, an additional excise tax of

one-half percent (0.5%) is levied on all taxable sales of tangible personal property, specified digital products, a digital code, and services subject to the tax levied by the Arkansas Gross Receipts Act of 1941, Arkansas Code § 26-52-101 et seq.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of all other Arkansas gross receipts taxes.

(b)(1) Except for food and food ingredients, an additional excise tax of one-half percent (0.5%) is levied on all tangible personal property, specified digital products, a digital code, and services subject to the tax levied by the Arkansas Compensating Tax Act of 1949, Arkansas Code § 26-53-101 et seq.

(2) The tax shall be collected, reported, and paid in the same manner and at the same time as is prescribed by law for the collection, reporting, and payment of Arkansas compensating taxes.

§ 3. Disposition of revenue.

(a) The revenue from the taxes levied under § 2 of this amendment shall be distributed to the State Highway and Transportation Department Fund, the County Aid Fund, and the Municipal Aid Fund in the percentages provided in sections § 27-70-201 and § 27-70-206 of the Arkansas Highway Revenue Distribution Law.

(b) No revenue derived from the taxes levied under § 2 of this amendment shall be used to secure bonds issued by the State Highway Commission.

§ 4. Effective date.

(a) If the Chief Fiscal Officer of the State determines that a written statement under Arkansas Constitution, Amendment 91, § 8(b), has been filed with the Chief Fiscal Officer of the State before June 1, 2023, the tax under § 2 of this amendment shall be levied and collected on and after July 1, 2023.

(b) If a written statement under Arkansas Constitution, Amendment 91, § 8(b), has not been filed with the Chief Fiscal Officer of the State before June 1, 2023, the tax under § 2 of this amendment shall not be levied and collected until the first day of the first calendar quarter beginning more than thirty (30) days after a written statement under Arkansas Constitution, Amendment 91, § 8(b), is filed with the Chief Fiscal Officer of the State.

**AMEND. 102. ARKANSAS TERM LIMITS AMENDMENT
(CONST. AMEND. 73, § 2, AMENDED).**

Publisher's Notes. This amendment amended Ark. Const. Amend. 73, § 2, and is incorporated within that section. The amendment was proposed by S.J.R. 15 during the 2019 Regular Session and ad-

opted at the 2020 general election by a vote of 647,861 for and 521,979 against.

Effective Dates.

Ark. Const. Amend. 102, § 2(2): Jan. 1, 2021.

ACTS DISPOSITION TABLE

This table supplements the Acts Disposition Tables for Tables Volumes A, B, and C in the 2019 supplement for sessions through the 2019 Regular Session, the 2020 First Extraordinary Session, and the 2020 Fiscal Session.

The abbreviation "R" followed by an act year and number in the column headed "A.C.A." indicates that that act has repealed the act and/or act section identified in the "Page" or "Act No." and "Section" columns.

For an explanation of other abbreviations, and for other information about the tables, please consult page 255 of the bound volume.

ACTS OF 1927

Act No.	Section	A.C.A.
249	4	R. 2019, No. 910, § 5028

ACTS OF 1929

Act No.	Section	A.C.A.
251	1-5	R. 2019, No. 221, § 1

ACTS OF 1935

Act No.	Section	A.C.A.
30	9	R. 2019, No. 552, § 6

ACTS OF 1937

Act No.	Section	A.C.A.
161	2	11-2-101, 11-2-108; R. in part 2019, No. 910, § 5282
	5	11-2-111; R. in part 2019, No. 910, § 5282

ACTS OF 1939

Act No.	Section	A.C.A.
331	4	R. 2019, No. 884, § 5; R. 2019, No. 972, § 2
	10	R. 2019, No. 884, § 5; R. 2019, No. 972, § 2

ACTS OF 1941

Act No.	Section	A.C.A.
112	1	11-2-111; R. in part 2019, No. 910, § 5282

ACTS OF 1945

Act No.	Section	A.C.A.
49	6	R. 2019, No. 884, § 5; R. 2019, No. 972, § 2

ACTS OF 1947

Act No.	Section	A.C.A.
350	1-8	R. 2019, No. 910, § 4854

ACTS OF 1949

Act No.	Section	A.C.A.
472	Part 1	
	1	8-4-102
	2	8-4-104, 8-4-106, 8-4-209; R. in part 2019, No. 910, § 2477
	9	8-4-103
	11	8-4-101

ACTS OF 1953

Act No.	Section	A.C.A.
42	7	15-31-104; R. in part 2019, No. 910, § 89
232	1	8-4-104

ACTS OF 1955

Act No.	Section	A.C.A.
57	Prelim.	17-91-101 (now 17-92-101)
	1	17-91-305 (now 17-92-305)
	2	17-91-307 (now 17-92-307)

ACTS DISPOSITION TABLE

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Act No.	Section	A.C.A.	Act No.	Section	A.C.A.
57	3	17-91-308 (now 17-92-308)	198	14	17-93-410 (now 17-95-410)
	4	17-91-310 (now 17-92-310)		15	17-93-408 (now 17-95-408), 17-93- 411 (now 17-95- 411)
	12	17-91-302 (now 17-92-302)		16, 17	17-93-408 (now 17-95-408)
	13	17-91-407 (now 17-92-407)		18	17-93-301 (now 17-95-301), 17-93- 303 (now 17-95- 303), 17-93-305 (now 17-93-305)
	14	17-91-403 (now 17-92-403)		19-21	17-93-402 (now 17-95-402)
	15	17-91-106 (now 17-92-106)		22	17-93-205 (now 17-95-205)
	16	17-91-407 (now 17-92-407)			
	17	17-91-408 (now 17-92-408)			
	18	R. 2019, No. 910, § 4891			
	19	17-91-205 (now 17-92-205)			

ACTS OF 1957

Act No.	Section	A.C.A.
197	1-3	R. 2019, No. 910, § 5608
	4-6	R. 2019, No. 1091, § 3
198	1	17-93-201 (now 17-95-201)
	2	17-93-202 (now 17-95-202)
	4	17-93-202 (now 17-95-202), 17-93- 203 (now 17-95- 203), 17-93-401 (now 17-95-401)
	5, 6	17-93-403 (now 17-95-403)
	7	17-93-204 (now 17-95-204)
	8	17-93-404 (now 17-95-404)
	9	17-93-405 (now 17-95-405)
	10	17-93-406 (now 17-95-406)
	11	17-93-411 (now 17- 95-411)
	12	R. 2019, No. 266, § 1
	13	17-93-409 (now 17-95-409)

ACTS OF 1959

Act No.	Section	A.C.A.
150	1	R. 2019, No. 910, § 89
211	1	8-4-104

ACTS OF 1961

Act No.	Section	A.C.A.
120	1, 2	8-4-102
185	8-101—8- 108	R. 1995, No. 425, § 1
193	1	R. 2019, No. 448, § 6

ACTS OF 1963

Act No.	Section	A.C.A.
257	2-5	R. 2019, No. 394, § 8
503	1	8-4-106; R. in part 2019, No. 910, § 2477

ACTS OF 1965

Act No.	Section	A.C.A.
71	1-3	R. 2019, No. 757, § 7
183	2	8-4-104
	3	8-4-106
	5	8-4-101
497	1-3	R. 2019, No. 105, § 1
576	96	R. 2019, No. 379, § 1

ACTS OF 1965 (2nd Extraordinary Session)			Act No.	Section	A.C.A.
			305	3	R. 2019, No. 448, § 9
Act No.	Section	A.C.A.	ACTS OF 1973		
12	1-3	R. 2019, No. 448, § 10	Act No.	Section	A.C.A.
	5	R. 2019, No. 448, § 10	254	1	R. 2019, No. 448, § 5
	7, 8	R. 2019, No. 448, § 10	259	1	R. 1995, No. 425, § 1
ACTS OF 1967			262	2	R. 2019, No. 910, § 2477
Act No.	Section	A.C.A.		3	8-4-106
303	26	R. 1995, No. 425, § 1		10	8-4-103
466	1	R. 2019, No. 910, § 6301	379	2	R. 2019, No. 379, § 1
ACTS OF 1968 (1st Extraordinary Session)			396	1	R. 2019, No. 448, § 4
Act No.	Section	A.C.A.	447	1-3	R. 2019, No. 448, § 8
25	13	R. 2019, No. 853, § 1	665	1	R. 2019, No. 448, § 4
ACTS OF 1969			666	1	R. 2019, No. 448, § 5
Act No.	Section	A.C.A.	754	1	R. 2019, No. 448, § 9
535	8	17-28-203 (now 17-31-203); R. in part 2019, No. 910, § 99	ACTS OF 1975		
ACTS OF 1971			Act No.	Section	A.C.A.
Act No.	Section	A.C.A.	6	1	R. 2019, No. 105, § 1
38	7	R. 2019, No. 910, § 5708	286	1	R. 2019, No. 448, § 8
	8	8-4-104n; R. 2019, No. 910, § 3250	313	2	R. 2019, No. 448, § 3
	11	R. 2019, No. 910, § 5116	415	9	R. 2019, No. 910, § 94
	13	R. 2019, No. 910, § 1021	496	1	R. 2019, No. 910, § 5708
	15	R. 2019, No. 910, § 5527	650	3	17-99-201 (now 17-101-201); R. in part 2019, No. 910, § 112
103	4, 5	R. 2019, No. 448, §§ 4, 5	659	6	R. 2019, No. 175, § 1
	6	R. 2019, No. 448, § 9	743	2, 3	8-4-102
132	34	R. 2019, No. 252, § 1		8	8-4-103
305	1, 2	R. 2019, No. 448, §§ 4, 5	907	9	24-4-601, 24-4-602; R. in part 2019, No. 448, § 5

ACTS OF 1975 [Extended Session, 1976]

Act No.	Section	A.C.A.
1195	3	R. 2019, No. 910, § 94
1206	1	R. 2019, No. 448, § 9

ACTS OF 1980 (1st Extraordinary Session)

Act No.	Section	A.C.A.
21	1	R. 2019, No. 105, § 1
70	1	R. 2019, No. 105, § 1

ACTS OF 1977

Act No.	Section	A.C.A.
546	5	26-57-215, 26-57-217, 26-57-221, 26-57-222; R. in part 1997, No. 1311; R. in part 1999, No. 1591, § 6; R. in part 2019, No. 1071, § 13
	28	26-57-227, 26-57-231; R. in part 2019, No. 1071, § 14
678	1-9	R. 2019, No. 335, § 1
	11	R. 2019, No. 335, § 1
904	1, 2	R. 2019, No. 640, § 9

ACTS OF 1979

Act No.	Section	A.C.A.
74	1-3	R. 2019, No. 640, § 9
324	1, 2	R. 2019, No. 910, § 6330
	3, 4	R. 2019, No. 910, § 6331
	7, 8	R. 2019, No. 910, § 6331
	12	R. 2019, No. 910, § 6331
444	1	R. 2019, No. 910, § 94
659	1-4	R. 2019, No. 150, § 1
715	5	R. 2019, No. 448, § 5
832	5	R. 2019, No. 910, § 5562

ACTS OF 1981

Act No.	Section	A.C.A.
412	1	R. 2019, No. 448, § 7
491	1	R. 2019, No. 448, § 7
506	1-19	R. 2019, No. 1091, § 8
587	9	R. 2019, No. 1091, § 7
769	8	R. 2019, No. 337, § 1
834	1	R. 2019, No. 910, § 3250
859	7	R. 2019, No. 448, § 5

ACTS OF 1983

Act No.	Section	A.C.A.
201	10	R. 2019, No. 910, § 94
310	1	R. 2019, No. 1091, § 8
733	1	8-4-103
758	2	R. 2019, No. 910, § 5562

ACTS OF 1985

Act No.	Section	A.C.A.
268	5	R. 2019, No. 700, § 3
464	3	R. 2019, No. 910, § 93
481	1-9	R. 2019, No. 150, § 1
514	3	R. 1995, No. 425, § 1
649	30	R. 2019, No. 910, § 5217

ACTS DISPOSITION TABLE

Act No.	Section	A.C.A.	Act No.	Section	A.C.A.
683	5	12-10-318, 12-10-321, 12-10-322; R. in part 2019, No. 660, § 5	935	1-4	R. 2019, No. 394, § 8

ACTS OF 1989 (1st Extraordinary Session)

Act No.	Section	A.C.A.	Act No.	Section	A.C.A.
	7	12-10-304, 12-10-308—12-10-310, 12-10-316, 12-10-317; R. in part 2019, No. 660, § 3	99	35	R. 2019, No. 910, § 5009
	9	12-10-313, 12-10-314; R. in part 2019, No. 660, § 3	183	12	R. 2019, No. 910, § 94
	10	R. 2019, No. 660, § 3		13	R. 2019, No. 910, § 93

ACTS OF 1991

Act No.	Section	A.C.A.	Act No.	Section	A.C.A.
930	1	8-4-104	412	7	R. 2019, No. 910, §§ 477, 478
944	1	R. 2019, No. 910, § 5562	441	13	R. 2019, No. 910, § 93

ACTS OF 1987

Act No.	Section	A.C.A.	Act No.	Section	A.C.A.
101	4	R. 2019, No. 309, § 1	516	4	8-4-107
529	1	8-4-103	546	1	6-50-501—6-50-503, 6-50-505; R. in part 2019, No. 369, § 2
748	6	R. 2019, No. 239, § 1	553	1	6-50-501—6-50-503, 6-50-505; R. in part 2019, No. 369, § 2
768	4	R. in part 1991, No. 412, § 6; R. in part 2019, No. 910, §§ 477, 478	674	1	R. 2019, No. 910, § 94
	5	R. 2019, No. 910, §§ 477, 478	744	1	8-4-104
956	6	R. 2019, No. 1042, § 1		2	R. 2019, No. 910, § 2477
1004	1	R. 2019, No. 448, § 9		3	8-4-106
1024	1	R. 2019, No. 910, § 94	749	4	19-11-261; R. in part 2019, No. 417, § 6
1068	1	R. 2019, No. 379, § 1	884	1	8-4-103
			908	1-8	R. 2019, No. 190, § 3

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839	1	R. 2019, No. 150, § 1	1244	28	25-6-106n; R. in part 2019, No. 369, § 2

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1246	3	R. in part 1999, No. 1323, §§ 2, 55; R. in part 2019, No. 369, § 2

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51	1	R. 2019, No. 640, § 9
	5	6-17-112, 6-18-503; R. in part 2019, No. 640, § 9

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165	9	8-4-102
	10	8-4-103
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461	2	8-4-103
559	3	R. 2019, No. 389, § 26
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728	32	R. 2019, No. 910, § 5708
	37	R. 2019, No. 910, § 5708
731	3	8-4-103
839	1, 2	R. 2019, No. 692, § 11
	4-8	R. 2019, No. 692, § 11
983	1, 2	R. 2019, No. 910, § 5017
991	1-6	R. 2019, No. 976, § 1
1198	1	17-101-101—17- 101-103, 17-101- 201, 17-101-203, 17-101-301—17- 101-313; R. in part 2019, No. 910, § 112
1229	1	R. 2019, No. 448, § 11
1313	38	R. 2019, No. 190, § 3

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409	20	R. 2019, No. 309, § 1
438	1	R. 2019, No. 383, § 25
639	17	12-61-125
	18	12-61-124; R. in part 2019, No. 910, § 5534
	19	12-61-124; R. in part 2019, No. 910, § 5535
	20	12-61-126
658	1	R. 2019, No. 976, § 1
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	42	R. 2019, No. 910, § 5708
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1196	29	R. 2019, No. 190, § 3			
1296	32	R. 2019, No. 692, § 11			

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			123	1	R. 2019, No. 910, § 95
			233	1-9	R. 2019, No. 335, § 1
			250	77	R. 2019, No. 910, § 5562
				83	R. 2019, No. 910, § 5608; R. 2019, No. 1091, § 3
				201	R. 2019, No. 1091, § 8
			436	2	R. 2019, No. 910, § 3575
			437	3	R. 2019, No. 309, § 1

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	8	R. 2019, No. 552, § 6	1219	1	R. 2019, No. 910, § 5116
540	1	R. 2019, No. 692, § 11		5	R. 2019, No. 910, § 5116
	3	R. 2019, No. 692, § 11	1323	27	R. 2019, No. 692, § 11
728	1-5	R. 2019, No. 150, § 1		30	R. 2019, No. 369, § 2
768	32	R. 2019, No. 910, § 5116		58	25-30-101—25-30- 107, 25-30-109— 25-30-205; R. in part 2019, No. 910, § 2392
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821	22	R. 2019, No. 910, § 5534		50	R. 2019, No. 910, § 5116
	23	R. 2019, No. 910, § 5535	1429	23	R. 2019, No. 757, § 2
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1275	1-3	R. 2019, No. 190, § 3	1475	4	R. 2019, No. 640, § 9
1337	23	26-57-255—26-57- 257; R. in part 2019, No. 1071, § 27	1565	1	R. 2019, No. 190, § 3
			1567	24	R. 2019, No. 998, § 4; R. 2019, No. 1024, § 4
1350	35	R. 2019, No. 910, § 6183			
1362	26	R. 2019, No. 757, § 2	1590	1	R. 2019, No. 296, § 2
	30	R. 2019, No. 190, § 3			

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391	14	R. 2019, No. 190, § 3		38	R. 2019, No. 448, § 7
627	3	R. 2019, No. 448, § 7		39	R. 2019, No. 448, § 8
652	1-8	R. 2019, No. 237, § 1		40	R. 2019, No. 448, § 9
851	24	R. 2019, No. 309, § 2		45	R. 2019, No. 448, § 11
1164	16	R. 2019, No. 910, § 2477	785	1	R. 2019, No. 910, § 5116
	116	R. 2019, No. 976, § 1	802	3	R. 2019, No. 910, § 5562

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1391	19	R. 2019, No. 521, § 13	ACTS OF 2005		
1666	39	R. 2019, No. 998, § 5; R. 2019, No. 1024, § 5	Act No.	Section	A.C.A.

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681	2	R. 2019, No. 190, § 3	78	1	R. 2019, No. 910, § 89
755	1	6-18-1801	188	4	R. 2019, No. 296, § 2
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	3	6-18-1803	1232	10	R. 2019, No. 237, § 1
	4	R. 2019, No. 757, § 40	1278	1	R. in part 2019, No. 910, § 5608; R. in part 2019, No. 1091, § 3; 13- 7-403—13-7-405R
	5	R. 2011, No. 176, § 1	1757	1	R. 2019, No. 1091, § 9
1160	1, 2	R. 2019, No. 237, § 1	1757	2	R. 2019, No. 190, § 3
1315	13	19-11-1001—19-11- 1005; 19-11-1007— 19-11-1009; 19-11- 1011, 19-11-1012; R. in part 2019, No. 417, § 9; R. in part 2019, No. 418, § 6	1949	1-3	R. 2019, No. 190, § 3
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2190	20	R. 2019, No. 692, § 2	1595	1	23-55-101—23-55- 103; 23-55-201, 23-55-202; 23-55- 207; 23-55-401— 23-55-404; 23-55- 501, 23-55-502; 23-55-601—23-55- 607; 23-55-701, 23-55-702; 23- 55- 801—23-55-808; 23-55-901, 23-55- 902; 23-55-1001— 23-55-1004; R. in part 2011, No. 733, § 3; R. in part 2019, No. 111, § 9

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16	2	R. 2019, No. 853, § 1

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533	1	R. 2019, No. 910, § 6
541	1-8	R. 2019, No. 335, § 1
604	1	R. in part 2017, No. 426, §§ 1, 2; R. in part 2019, No. 1091, § 1
629	1	R. 2019, No. 389, § 73
688	1	R. 2019, No. 389, § 72
1025	1	R. in part 2013, No. 1095, § 9; R. in part 2019, No. 925, § 6
1032	32	19-5-1234; R. in part 2019, No. 998, § 7; R. in part 2019, No. 1024, § 7
1049	39	R. 2019, No. 105, § 1
1201	32	19-5-1234; R. in part 2019, No. 998, § 7; R. in part 2019, No. 1024, § 7
1210	5	R. 2019, No. 910, § 4900
1573	27, 28	R. 2019, No. 190, § 3

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393	1	20-13-801, 20-13- 802, 20-13-804— 20-13-821; R. in part 2019, No. 389, § 26
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471	1	R. 2019, No. 389, § 72
481	4	R. 2019, No. 925, § 6
791	2, 3	R. 2019, No. 925, § 6
	5, 6	R. 2019, No. 925, § 6
947	1	R. 2019, No. 1091, § 1
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1275	1	R. 2019, No. 383, § 4
1374	1	20-15-1901—20-15- 1905; R. in part 2019, No. 655, § 1
1480	56, 57	R. 2019, No. 105, § 1
1500	1	R. 2019, No. 670, § 2

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599	1	R. 2019, No. 1091, § 1	1448	1	21-1-701, 21-1-702; R. in part 2019, No. 1054, § 1
889	1	R. 2019, No. 389, § 11; R. 2019, No. 910, § 4963	1496	21	R. 2019, No. 389, § 78
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1001	1	R. 2019, No. 822, § 18	1497	1	R. 2019, No. 389, § 78
1172	1	R. 2019, No. 190, § 3		2	R. 2019, No. 388, § 4
1204	2	R. 2019, No. 190, § 3	1498	1	R. 2019, No. 389, § 78
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1132	39	R. 2019, No. 389, § 72	892	4	R. 2020, No. 186, § 2; R. 2020, No. 187, § 2
	40	R. 2019, No. 389, § 73		5	25-30-101—25-30-107, 25-30-109; R. in part 2019, No. 910, § 2392
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1145	8	R. 2019, No. 998, § 4; R. 2019, No. 1024, § 4			
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8	58	R. 2019, No. 910, § 579
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